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Description of document: National Security Agency (NSA) articles or wiki articles regarding the Freedom of Information Act 2006-2009

Requested date: 06-January-2009

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Source of document: National Security Agency
Attn: FOIA/PA Office
9800 Savage Road, Suite 6932
Fort George G. Meade, MD 20755-6932
Fax: 443-479-3612 (Attn: FOIA/PA Office)
[Online Form](#)

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NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 57996A
7 August 2009

This responds to your Freedom of Information Act (FOIA) request of 6 January 2009 for "any articles, reports, reviews, web pages, pamphlets, blogs or wikis maintained by the NSA that principally discuss The Freedom of Information Act (FOIA)." Your request was clarified on 2 February 2009 to be for any articles that NSA wrote that principally describe the Act or discuss the Act, not including records on implementing the Act. A copy of your request is enclosed. Your request has been processed under the FOIA and the documents you requested are enclosed. Certain information, however, has been deleted from the enclosures.

Some of the information deleted from the documents was found to be currently and properly classified in accordance with Executive Order 12958, as amended. This information meets the criteria for classification as set forth in Subparagraph (c) of Section 1.4 and remains classified CONFIDENTIAL as provided in Section 1.2 of the Executive Order. The information is classified because its disclosure could reasonably be expected to cause damage to the national security. Because the information is currently and properly classified, it is exempt from disclosure pursuant to the first exemption of the FOIA (5 U.S.C. Section 552(b)(1)).

This Agency is authorized by statute to protect certain information concerning its activities, as well as the names of its employees. Such information is exempt from disclosure pursuant to the third exemption of the FOIA which provides for the withholding of information specifically protected from disclosure by statute. The specific statute applicable in this case is Section 6, Public Law 86-36 (50 U.S. Code 402 note). We have determined that such information exists in these records, and we have excised it accordingly.

In addition, Subsection (b)(2) of the FOIA exempts from disclosure matters related solely to the internal personnel rules and practices of an agency. This exemption has been held to apply to matters that are "predominantly internal," the release of which would "significantly risk circumvention of agency regulations or statutes." Crooker v. Bureau of Alcohol, Tobacco, and Firearms, 670 F.2d 1051, 1074 (D.C. Cir. 1981). Information contained within the enclosures meets the criteria for Exemption (b)(2) protection as that statutory provision has been interpreted and applied by the Federal Judiciary. The information being protected under Subsection (b)(2) is limited to URLs that would reveal how NSA's information network is constructed. The release of such information could expose the network to unauthorized access.

Since these deletions may be construed as a partial denial of your request, you are hereby advised of this Agency's appeal procedures. Any person denied access to information may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days from the date of the initial denial letter. The appeal shall be in writing addressed to the NSA/CSS FOIA Appeal Authority (DJP4), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. The appeal shall reference the initial denial of access and shall contain, in sufficient detail and particularity, the grounds upon which the requester believes release of the information is required. The NSA/CSS Appeal Authority will endeavor to respond to the appeal within 20 working days after receipt, absent any unusual circumstances.

Also, information which is not responsive to the subject of your request has been redacted from the enclosures and marked "Non-Responsive." Review of the non-responsive portions would be necessary for release consideration, thus causing additional delay in our response.

Sincerely,



PAMELA N. PHILLIPS
Chief
FOIA/PA Office

Encls:
a/s

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DYNAMIC PAGE -- HIGHEST POSSIBLE CLASSIFICATION IS

~~TOP SECRET // COMINT~~**(U) What Is a FOIA Request? And Why Is S02L3 Always Bugging Us?**

FROM: [REDACTED]

Intelligence Security Issues (S02L3)

Run Date: 06/01/2006

(b) (1)

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(U) How NSA handles the many Freedom of Information Act requests it receives every year.

(U) It's a dirty job, but someone's got to do it.

(U) By law, any person, including a foreign national, can request access to government records. Signed into law by President Johnson in 1966, the Freedom of Information Act (FOIA) attempts to balance the public's interest with the federal government's need to protect vital information. NSA/CSS usually receives over 800 of these requests each year and, with the Agency appearing so frequently in the news, this year so far it has received over 1600 requests.

(U) The types of requests cover a broad range, such as researchers seeking material on current operations or families looking for information about a relative missing in action during the Vietnam era. And, of course, the popular UFO sightings that NSA/CSS is thought to have knowledge about.

(U) FOIA requests are submitted to the Agency through mail, fax, and the Internet. When the request involves SIGINT issues, the Freedom of Information Act/Privacy Act Office (DC34) tasks the Intelligence Securities Issues (S02L3) staff with coordinating the search for information amongst the various SID elements.

(U) In spite of the Agency's backlog of prior FOIA requests, DC34 is required to provide an initial cost estimate back to the requestor within 20 business days. A tasking is sent out, asking the mission element to estimate how long it would take to search and examine official records, including e-mails. Those who request information fall into several categories: the news media, educational and scientific institutions, commercial entities, and "all others," which include the general public. News organizations and academic institutions are exempted from paying search and review fees.

(U) In addition to the disruption to their day-to-day operations, mission elements are naturally reluctant to provide sensitive source material. However, the FOIA Office conducts a thorough line-by-line classification review of all documents and works closely with the subject matter experts to determine whether the information should be released.

(U) So, although offices may never relish answering FOIA requests, at least they can rest assured that no secrets will be divulged! We'll continue to do our best to make the process as painless as possible.

(U) If you have questions about FOIA, please contact **Intelligence Security Issues**.

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07-20-2009, FOIA Case # 57996

"SIDtoday articles may not be republished or reposted outside NSANet without the consent of the Information Owner."

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Information Owner: [redacted] S0202, 966-2534, (email)

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~~TOP SECRET // COMINT~~ [redacted]

DERIVED FROM: NSA/CSSM 1-52, DATED 08 JAN 2007 DECLASSIFY ON: 20320108

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DYNAMIC PAGE -- HIGHEST POSSIBLE CLASSIFICATION IS

~~TOP SECRET // COMINT~~ [REDACTED]**(U) What's the Difference Between UNCLASSIFIED and FOUO?**FROM: [REDACTED] SID Classification Advisory Officer (S02L1), and
SIGINT Communications (S02O2)

(b) (1)

Run Date: 06/03/2008

(b) (3) - P.L. 86-36

(U) Have you ever been busy portion marking some text and come across a paragraph that was clearly not classified, but you weren't sure whether it should be just (U) or (U//FOUO)? What criteria should be used in making that determination?

 clipboard/memo

(U) Many employees find the FOR OFFICIAL USE ONLY marking a little tricky, because it is applied only to UNCLASSIFIED material, yet it still calls for handling restrictions -- characteristics that at first glance can seem to be at cross-purposes with each other. In this article, we'll try to clarify 1) why we have the FOUO marking, and 2) under what conditions it should be used.

(U) The FOUO marking applies to unclassified information that may be **exempt from mandatory release to the public** through a Freedom of Information Act (FOIA) request.

(U) So how can one tell what types of information should be granted FOUO protection? In order to qualify, information must fit into one of several FOIA exemptions,* including the following that pertain most directly to NSA:

- (U) **Internal matters, the disclosure of which would possibly allow external parties to circumvent an NSA process or procedure** (i.e., as the Justice Department says "allow evildoers to do evil"). This can include the following:
 - o Polygraph questions;
 - o Packing/wrapping procedures for classified mail;
 - o Parking or visitor passes;
 - o Email headers that can reveal network details;
 - o Security procedures or vulnerabilities.

[FOIA Exemption 2]
- (U) **Details of internal Agency organization, functions, and activities, protected by Public Law 86-36.** This can include the following:
 - o Organizational diagrams, employee names, titles, salaries, or number of NSA employees;
 - o Portions of URLs that reveal information about NSA's network or organizational structure; or
 - o A level of detail about NSA activities not normally provided to the public that, if revealed, may provide an insight which could impede those activities.

*[FOIA Exemption 3, which allows exemption under specific statute. Other statutes can be cited under this exemption to protect unclassified data subject to export control, intelligence sources and methods, or other details which are often classified.**]*
- (U) **Trade secrets and commercial or financial information**, the release of which could:
 - o Cause a company (such as an NSA contractor) competitive harm in the workplace;
 - o Prevent the government from obtaining similar information in the future.

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[FOIA Exemption 4; it also exempts contractor proposals not incorporated into a contract.]

- (U) **Inter- or intra-agency memoranda or letters** that would "not be available to a party in litigation with the Agency":***
 - o Protects the deliberation process by encouraging open, frank discussions without fear that brainstormed comments will be released publicly;
 - o Avoids the premature disclosure of proposed policies before they are adopted;
 - o Protects trial processes by insulating an attorney's work products;
 - o Protects confidential communications between an attorney and a client in the workplace.
 - o May include drafts, proposals, recommendations, editorial comments, etc.

[FOIA exemption 5]

- (U) **Information related to personal privacy**, for example:
 - o Home addresses and phone numbers;
 - o Social security numbers;
 - o Age or date or birth/place of birth;
 - o Medical information;
 - o Evaluations of one's work;
 - o Allegations of wrongdoing.

[FOIA exemption 6]

- (U) **Details of personnel investigations**, such as for the granting of a security clearance, for law enforcement purposes, or in connection with suspected espionage.

[FOIA exemption 7]

(U) Hopefully the above examples provide a basic understanding of how information can be considered unclassified, yet still warrant FOUO protection from release to the public. Please take care when portion marking to avoid automatically marking all unclassified material as FOUO -- **information that does not fall into one of the nine FOIA exemptions must be marked simply UNCLASSIFIED.**

(U/~~FOUO~~) The FOIA Office (DJP4) is the POC for definitions, usage, and rules for FOUO information. **DJP4's web site** has a wealth of information relating to FOIA and U//FOUO. Additionally, **Appendix C of DoD Regulation 5200-1.R** is worth reading.

(U) Notes:

* (U) The exemptions cited correlate to those listed in the **Freedom of Information Act and DoD Regulation 5200.1-R.**

** (U) FOIA Exemption 1 is used to protect classified information. Statutes cited under Exemption 3 can serve as additional protection for classified information.

*** (U) I.e., the documents are normally privileged in the context of civil discovery laws.

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consent of the Information Owner."

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The accredited security level of this system is: ~~TOP SECRET//SI//TK//REL~~

(U) Freedom of Information Act

UNCLASSIFIED

From WikiInfo

(Redirected from FOIA)

The **Freedom of Information Act (FOIA)**, section 552 of title 5, United States Code, was

signed into law on July 4, 1966 by President Lyndon B. Johnson. FOIA requires agencies of the Federal Government to make certain agency information available for public inspection and copying and to establish and enable enforcement of the right of any person to obtain access to the records of such agencies, subject to statutory exemptions, for any public or private purpose. This Act:

- fosters democracy by ensuring public access to agency records and information;
- improves public access to agency records and information;
- ensures agency compliance with statutory time limits;
- and maximizes the usefulness of agency records and information collected, maintained, used, retained, and disseminated by the Federal Government.

Other resources:
[Freedom of Information Act \(United States\)](#) on Wikipedia



President Lyndon B. Johnson

Revisions

The Electronic Freedom of Information Amendment of 1996 amended section 552 of title 5, United States Code, to provide for public access to information in an electronic format.

In 2007 Congress passed a measure to tackle glaring flaws in the FOIA process. With overwhelming bipartisan support, the measure would:

- Prod stricter deadlines with a numerical tracking system so citizens could follow their requests like (lost) package deliveries.
- Establish clear penalties for foot-dragging, including repayment of attorney fees for applicants found suffering the run-around at recalcitrant agencies.
- Create an ombudsman office at the National Archives to mediate disputes over requests, which currently are rejected outright in a full third of the cases.
- Ensure that information records held by private government contractors can no longer be kept off-limits to FOIA requests. ^[1]

Exemptions

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Certain information is exempt from disclosure under the FOIA:

- (b)(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this

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(b) (3) - P.L. 86-36

subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

For a full list of FOIA exemptions, please see the Freedom of Information Act text

[Redacted]

See also

- Freedom of Information Act Express
- Executive Order 12958
- Privacy Act (PA)
- FOR OFFICIAL USE ONLY

External links

- Go: FOIA – Freedom of Information and Privacy Office (DJP4)
- CAPCO FOIA page

[Redacted]

References

1. ↑ Information Con Game (<http://www.mh.cia/news/Mh122207/InformationConGame.htm>), New York Times, 22 Dec 2007.

Retrieved from [Redacted]

Category: US law

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- [1 watching user]
 - This page was last modified 22:17, 12 September 2008
- by [Redacted] Based on work by [Redacted]
and [Redacted]

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Answer ID 3987
Category Office of Policy
Date Created 02/04/2005 09:35 AM
Last Updated 11/18/2008 07:21 AM
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File Attached No

(U) ENLIGHTEN Postings, Blogs, etc., and the FOIA

Question

(U) Are ENLIGHTEN postings and blogs/journals on the NSA Net subject to the Freedom of Information Act?

Answer

(U) It has been noted that discussions may be found on ENLIGHTEN and in blogs/journals about issues not related to employee's jobs and that some of these discussions include references that, if released to the public, would cause embarrassment to the Agency and/or the individuals involved. Besides recognizing the issues of misuse of government resources and fraud, waste and abuse, numerous articles have been posted about creating records which may be released to the public in response to a Freedom of Information Act (FOIA) request.

(U) The question has been asked as to how such records would be retrieved pursuant to a request for records under the FOIA. When an FOIA request is received by DJP4, a search, reasonably calculated to locate responsive records, is conducted. This means that DJP4 determines which organizations within NSA might hold responsive material and tasks the organizations to conduct a search. Each organization must search all types of media. If personnel in an organization reasonably believe that e-mails, WEBWORLD pages, or "blog-type" postings may contain responsive information, those electronic records must be searched. In addition to conducting the search, the responding organization must notify DJP4 of the strategy used in conducting the search so that the FOIA office can be assured that a proper search was conducted. The method of search must be documented because a requester may challenge

Print Answer

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the completeness or accuracy of an agency's search.

(U) The bottom line question here is: Will the unnecessary, not work-related (and sometimes sarcastic, flippant, and disrespectful) comments made by some users be located in a search for records under the FOIA? The answer is: If we know where to look for it and it's there when a request for such material is received, YES!

(U) Every federal employee has FOIA obligations.

"...if you create a record on an Agency electronic system (e.g., WEBWORLD, ENLIGHTEN) or import information or data from the Internet and place it in an Agency electronic system, you have created an Agency record which is susceptible to request and review under the FOIA."

Notify Me by Email if this Answer is Updated

How well did this answer your question?

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Related Answers

- (U) FOIA requirement to perform the searches, collect and review the material for release
- (U) FOIA and Agency Records: Your Obligations Under the Law
- (U) Protection of NOFORN Data

Previously Viewed Answers

- (U) What Protection Does "U//FOUO" Provide?
- (U) Can I get a Copy of my Manager's Scoresheet Evaluation?

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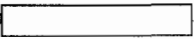
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Information Owner [redacted] DN1, 963-5901
Published By: AskNsa Online Development Team, [redacted] T222, 983-5491

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(U) FOIA requirement to perform the searches, collect and review the material for release

Question

(U) FOIA Follow-up Issues

Answer

(U) The Freedom of Information Act is a law which requires federal executive agencies and departments to respond to requests from the public for government records. Congress enacted the FOIA in 1966, recognizing that the public has the right to be informed about the government's activities. There are exceptions to the release of information, and the exemptions included in the law are applied by my office, as appropriate. But the exemptions do not relieve us of the requirement to perform the searches, collect and review the material for release.

(U) You now understand that while NSA is certainly charged with unique responsibilities as a DoD component and a member of the intelligence community, we must also adhere to the laws binding on all federal agencies. To put it succinctly, the FOIA is a "real" part of our mission as a U.S. agency. It is not our only "real" work, to be sure, but a job that must be factored in to the other duties we are required to perform, and given the time requirements of the law, FOIA duties must often take priority over other tasks. We dealt with the most recent changes to the law by increasing the number of people who work FOIA in the Office of Policy, by automating the process as much as possible, and by urging the entire Agency workforce to be as earnest as possible in supporting this requirement.



Print Answer



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(U) The responsibility of ensuring that NSA complies with the law lies with the Office of Policy.

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How well did this answer your question?


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Related Answers

- (U) Writing a Textbook on Personal Time
- (U) FOIA Searches and Estimates
- (U) ENLIGHTEN Postings, Blogs, etc., and the FOIA

Previously Viewed Answers

- (U) Revisiting FOUO
- (U) 25-year Declassification Rule
- (U) ENLIGHTEN Postings, Blogs, etc., and the FOIA

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(U) Freedom of Information Act

Question

(U) Freedom of Information Act - Everyone's Access to Government Information; Privacy Act - Not Everyone's Access

Answer

(U) The Freedom of Information Act (FOIA), enacted in 1966, establishes an effective statutory right of access to government information. The FOIA provides that any person has a right, enforceable in court, of access to federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. Since this right of access is not limited to U.S. citizens, NSA receives, and responds to, requests from foreigners. The law draws no bounds around what a requestor can ask for; it only stipulates that the receiving Agency be able to reasonably ascertain which records are being requested. Once records are found, they must be reviewed to see if they are responsive to the request and to identify any information which may legally be withheld under one of nine exemptions. A classified document would be reviewed to identify any unclassified portions which would be responsive and the release of which would cause no foreseeable harm to the national security. In addition, older records which have gone through a mandatory classification review and which are subsequently declassified, are also releasable. In what may come as a surprise to some, the Agency releases considerable amounts of information in response to FOIA and Privacy Act requests.



Print Answer



Email Answer

(U) The Privacy Act (PA) of 1974, in the broadest of terms, balances the government's need to maintain information

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about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from federal agencies' collection, maintenance, use, and disclosure of personal information about them. The law defines an individual as a citizen of the U.S. or an alien lawfully admitted for permanent residence. One of the primary considerations in determining whether to release information under the PA or not is the "no disclosure without consent" rule. This simply means that no agency shall disclose any record to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(~~FOUO~~) DJP4, the FOIA/PA branch within the Office of Information and Policy, processes approximately 1,000 FOIA and Privacy Act requests each year. FOIA and PA case officers are knowledgeable in many areas of the Agency's missions; they regularly make classification decisions as part of their review process. They interact frequently with the Office of General Counsel, discussing legal issues that may affect decisions to withhold/release information. Since each request is somewhat different, case officers are presented with an interesting variety of challenging cases. While DJP4 is the OPI for providing all responses to FOIA/PA requests, the job gets done only with the broad support and records-finding assistance of many people and organizations within the directorates/associate directorates. It's a legal responsibility to respond to FOIA/PA requests, and the Agency is meeting this responsibility every day through the professional, dedicated efforts of a lot of folks.

(U/~~FOUO~~) Please help us to help you better by taking a second to rate how well this answered your question, using the rating scale immediately below. Thank you.

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How well did this answer your question?

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Related Answers

- (U) Privacy Act Info on Web
- (U) Federal Records Act and Internet
- (U) How does the Privacy Act (PA) affect NSA employees?

Previously Viewed Answers

- (U) Are IG Procedures FOIA-able?
- (U) FOIA requirement to perform the searches, collect and review the material for release
- (U) Revisiting FOUO

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(U) FOIA and Agency Records: Your Obligations Under the Law

Question

(U) FOIA and Agency Records: Your Obligations Under the Law

Answer

(U) The Freedom of Information Act (FOIA) requires that an agency provide the public access to its records unless the information is protected by one of nine exemptions. When a requester submits a letter to NSA requesting records pursuant to this law, FOIA/PA (DJP4) must conduct a search that is reasonably calculated to locate responsive records. This means that DJP4 must search organizations within the Agency that would most likely have responsive material. You may have already provided support to DJP4 in this important mission or you may be tapped in the future. With the recent passage of the Electronic FOIA (EFOIA), we thought it would be a good time to remind employees of their obligations under the law regarding the search for material responsive to the FOIA. We'd like you to understand what a record is and what is expected of you as the record holder or creator.



Print Answer



Email Answer

(U//FOUO) A record is any material which conveys information. Records may be paper, film, audiotape, microfiche, an electronic record or any other type of material that contains information. Because of your expertise in a certain area or simply because of your physical access to the records, you may be called upon to locate Agency records on a particular subject. Please be mindful of the need to search ALL media under the authority of your office. This includes boxes sent to the NSA Records Center for storage, information on the web relating to your organization's mission, e-

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mails, etc. Of course, one should not overlook the obvious - the storage areas within your office.

(U//~~FOUO~~) In addition, you should always remember that the official records you compile, be they paper, electronic, or some other media, may be subject to a future FOIA request. Even handwritten notes regarding official matters may be subject to release. If you add marginalia to a document, you'll want to make sure that you or the Agency won't be embarrassed if those side notes/comments are subsequently made public because they don't qualify for protection under one of the FOIA's nine exemptions. Also, if you create a record on an Agency electronic system (e.g., WEBWORLD, ENLIGHTEN) or import information or data from the Internet and place it in an Agency electronic system, you have created an Agency record which is susceptible to request and review under the FOIA.

(U//~~FOUO~~) We know that you'll have lots of questions regarding the definition of a record and what constitutes a reasonably calculated search. This article is meant to alert Agency employees to the issue. When you are asked to respond to a FOIA request or when you place information on the web or import material from Internet, keep these things in mind. DJP4 is always ready to help you help the Agency meet its legal obligation. For questions about records and records management, you should call DJP2, Records Center and Archives on 972-2260s.

Notify Me by Email if this Answer is Updated

How well did this answer your question?

Helpful Somewhat Helpful Not Helpful

Related Answers

- (U) Former Employees Using Internet
- (U) Federal Records Act and Internet
- (U) Internet/Freedom of Information Act/Federal Records Act

Previously Viewed Answers

- (U) Freedom of Information Act
- (U) Are IG Procedures FOIA-able?
- (U) FOIA requirement to perform the searches, collect and review the material for release

Back to Search Results 

(b) (3) - P.L. 86-36

DECLASSIFY ON 20320108

Information Owner: [redacted] DN1, 963-5901

Published By: AskNsa Online Development Team, [redacted] T222, 983-5491

(b) (1)

(b) (3) - P.L. 86-36

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(b) (1)
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Answer ID 3725
Category Office of Policy
Date Created 01/28/2005 02:34 PM
Last Updated 06/04/2008 09:05 AM
Embedded URL No
File Attached No

(U) Follow-up on FOIA/PA

Question

(U//FOUO) Is the released information then considered public? If so, would it be possible to make available a list of what NSA information has been released? It would help in individual classification decisions to know that "Fact XXX has now been declassified and released."

Answer

(U) A release to one under the FOIA is a release to all. While a FOIA release is a public release, information may not always find its way to the public. Media requesters and researchers often use the material in publications, which may reach a wide segment of the population. Other requesters may want the information for their own personal use and do not further disseminate it. Some requesters post information right to the INTERNET.

(U) In the past, DJP4 did not maintain a listing of what had been released. We accessed our database to determine if a particular topic or document had been the subject of a prior request. If so, and the material was released before, it was an easy matter to release it again to the latest requestor. If a requester asked for a document by title, unless the subject of a previous request contained similar words to that in the title, there was not an efficient way to locate a previously released document. Since April 2001, we have moved to an on-line redaction system. All records reviewed for declassification or release under any of the Agency's programs are stored on the database. We can search for documents by title and determine how they were handled.

Print Answer
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(U) Information that is to be declassified as a result of a FOIA request is coordinated with DJP2, the Office of Information Security Policy, which manages the classification and declassification of Agency information. Major declassification decisions are sent out to a broad Agency distribution. An example of such a decision involves the fact of SIGINT targeting of North Vietnam from 1960-1975. Prior to its being declassified in February 1993, that fact was Secret-COMINT.

(U) Because there is much more to declassification than its ties to FOIA, we will post a more in-depth article on that topic in the near future.

(U/~~FOUO~~) Please help us to help you better by taking a second to rate how well this answered your question, using the rating scale immediately below. Thank you.

Notify Me by Email if this Answer is Updated

How well did this answer your question?

Helpful **Somewhat Helpful** **Not Helpful** **Submit Rating**

Related Answers

- (U) Supervisor Insurance
- (U) Air Quality in Agency's Buildings
- (U) What is the process for portion-marking computer programs?

Previously Viewed Answers

- (U) Web Pages as Government Records
- (U) FOIA and Agency Records: Your Obligations Under the Law
- (U) Freedom of Information Act

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Information Owner DN1, 963-5901
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Answer ID 3951
Category Office of Policy
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Last Updated 06/04/2008 06:21 AM
Embedded URL No
File Attached No

(U) FOIA Searches and Estimates

Question

(U) FOIA searches and estimates

Answer

(U) Under the provisions of the Freedom of Information Act, any member of the public may request information from government agencies. Agencies that receive such requests are bound by law to perform reasonable searches, estimate the costs of their searches, and produce documents that are responsive to the request unless the information falls within the scope of one of nine exemptions. Agencies are required to respond to the requester in a specified period of time.



Print Answer



Email Answer

(U) The Agency will have more time to respond to these requests (20 working days instead of 10, extendable to 30 as opposed to 20); however, we will no longer be able to rely on our backlog as an excuse for asking for additional time when sued by a requester. Instead, cases which cannot be completed in the statutory time must now be negotiated with the requester to arrive at a mutually agreeable completion date. In addition, we as an agency must show substantial progress in reducing our backlog, or we could be collectively subject to severe judicial penalties (including judicial release of documents before we can take the necessary actions to redact sensitive information).

(U) In the past, there have been times when offices throughout the Agency (mine included) have been less than

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aggressive in fulfilling the estimate and search requirements of the law. With the changes made to the FOIA this year, that can no longer be acceptable. Each and every one of us must do our utmost to meet the deadlines imposed on FOIA estimates and searches on every case which reaches our office. Given the potential legal ramifications that could accrue to the Agency if we fail to perform this vital service, none of us can afford to be less than fully and promptly responsive to the requirements of the FOIA.

(U) Questions about your obligations under the FOIA should be referred to DJP4, FOIA/PA, at 963-5827.

Notify Me by Email if this Answer Is Updated

How well did this answer your question?

Helpful Somewhat Helpful Not Helpful

Related Answers

- (U) FOIA requirement to perform the searches, collect and review the material for release
- (U) Privacy Act

Previously Viewed Answers

- (U) Impact of the VENONA Declassification
- (U) Follow-up on FOIA/PA
- (U) Web Pages as Government Records

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Freedom of Information Act (FOIA) Handbook

Definition of the Freedom of Information Act (FOIA)

The FOIA generally provides that any person (with the exception of another federal agency, a fugitive from the law, or a representative of a foreign government) has a right, enforceable in court, to request access to federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one of nine exemptions.

Definition of the Privacy Act (PA)

The Privacy Act protects an individual's privacy by putting controls on federal agencies in the collection, use, maintenance, and dissemination of personal information. In addition, it entitles individuals to access federal agency records or to request an amendment to records that are maintained in a file retrievable by an individual's name or personal identifier, except to the extent that information is exempt from release. Individual, in the context of the Privacy Act, is defined as a U.S. citizen or an alien lawfully admitted for permanent residence. The Privacy Act also requires that agency records be accurate, relevant, timely, and complete, and amendments are limited to these criteria. However, amendments are normally restricted to correcting factual errors and not matters of official judgments, such as performance ratings, or subjective judgments that reflect an individual's observation, evaluation, or opinion.

NSA and the FOIA

[NSA/CSS Mission](#) (selection will take you to the About NSA Web Pages.)

The goal of the FOIA office at NSA is to release as much information as possible, consistent with the need to protect information under the exemption provisions of the law. Where discretionary releases can be made without causing harm, the Director of Policy, as the Initial Denial Authority, and the NSA Deputy Director, as the Appeal Authority, use their discretion to release information even where an exemption may be available. The FOIA exemptions used by NSA to protect information are exemptions one through seven. The eighth and ninth exemptions do not pertain to the missions and functions of NSA.

Because of the sensitivity of NSA's functions and activities, the most often cited exemptions are (b)(1) (national security information) and (b)(3) (exemption by statute). The statutes most often applied to the protection of information are the following:

- Section 6 of the National Security Agency Act of 1959 (Public Law 86-36, 50 U.S.C. Sec. 402 **note**), which provides that no law shall be construed to require the disclosure of, *inter alia*, the functions or activities of NSA and the names of NSA employees;

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- the National Security Act, 50 U.S.C. Sec. 403-1(i), which protects information pertaining to intelligence sources and methods; and
- 18 U.S.C. Sec. 798, which prohibits the release of classified information concerning communications intelligence and communications security information to unauthorized persons.

Two other statutes which may pertain to NSA information are 10 U.S.C. 130, which allows for the withholding of any technical data with military or space application if such data may not be exported lawfully outside the United States without approval, authorization, or license under the Export Administration Act of 1979 or the Arms Export Control Act; and 10 U.S.C. 2305(g), which prohibits the release of a contractor proposal submitted in response to a competitive bid unless the proposal is set forth or incorporated by reference in a contract. At NSA, proposals typically are not incorporated by reference or set forth in contracts resulting from competitive procurements.

To Submit an FOIA Request

FOIA requests must be submitted in writing and must be signed by the requester. The request should be mailed to:

National Security Agency
ATTN: FOIA Office (DJ4)
9800 Savage Road STE 6248
Ft. George G. Meade, MD 20755-6248

Or it may be sent by facsimile to 443-479-3612. If sent by fax, it should be marked for the attention of the FOIA office. The telephone number of the FOIA office is 301-688-6527.

The request should be as specific as possible to ensure an accurate and focused search for responsive material. A request that does not reasonably describe records cannot be processed, and the requester will be asked to clarify the subject of his/her request.

Processing Time

Requests vary in their scope and complexity. For that reason, it is difficult to provide an "average" processing time. Actual processing time will depend upon how extensive a search is required; the complexity, volume and sensitivity of the records located; the need for consultation among various offices within NSA, as well as the need to consult with other agencies having an interest in the material; and the number of cases preceding a request in the processing queue. Requests are processed on a "first-in, first-out" basis based on the origination date of the request. Statistics show that the average processing time for requests completed in the year 2000 was

approximately 165 working days.

Expedited Treatment

A request will be expedited if an individual requests such processing and demonstrates a compelling need, as defined by the FOIA, or demonstrates a need for expedited treatment, as detailed in NSA/CSS Policy 1-5 or Department of Defense FOIA Regulation 5400.7-R (PDF Format). The requester seeking expeditious processing must provide a statement certified by him/her to be true and correct to the best of his/her knowledge.

Appeal Process

A requester has the right to file an administrative appeal if an adverse determination is made. Examples of adverse determinations are a denial of records or information within records, the inability of an agency to locate records, the determination that a request does not fall under the purview of this Agency, a denial of a waiver of fees, and a denial of expedited processing.

An appeal should be addressed to:

NSA/CSS FOIA Appeal Authority (DJ4)
National Security Agency
9800 Savage Road STE 6248
Ft. George G. Meade, MD 20755-6248.

Annual Report

NSA prepares an annual report on its FOIA processing. A copy of that report may be requested from the FOIA office at the address listed above for submitting requests. The NSA report currently is included in the Department of Defense (DoD) Annual Report to Congress. The DoD report can be accessed on the World Wide Web at the following URL:

<http://www.defenselink.mil/pubs/foi/>

Related Links



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Overview of the Freedom of Information Act's Nine Exemptions

1. This memorandum provides a brief introduction to the Freedom of Information Act and its nine exemptions.

Introduction to the Freedom of Information Act

2. The Freedom of Information Act (FOIA) is a broad public disclosure statute whose intent is to make sure that federal government agencies are not creating secret law or making decisions in secret. FOIA attempts to fulfill the proposition that persons who have access to government information are better informed about what the government is up to. As a result, FOIA mandates that each federal government agency, including the National Security Agency (NSA), make available certain agency information in the Federal Register, or when information is not required to be in the Federal Register, it must be made available by an agency for public inspection and copying. Whenever a request from any person for information contained in agency records is not provided or made available in the foregoing formats, it must be provided by the agency to the requesting person.

3. Agency records are documents either created by or obtained by an agency, and the agency has used the documents in connection with its official and legitimate duties or pursuant to federal law. **Department of Justice v. Tax Analysts**, 492 U.S. 136, 144-45 (1989).

4. The exception to the mandate that agencies provide information to requesters is FOIA's nine exemptions. These exemptions provide an agency with the authority to withhold information contained in an agency record when a valid exemption applies to the information. While these exemptions provide the authority to withhold information, FOIA, consistent with its disclosure posture, requires that agencies provide portions of a record which are not covered by a valid exemption, even though other parts may be covered by a valid exemption. The FOIA does not demand that agencies invoke exemptions to protect information. The use of exemptions is discretionary, and agencies may waive applying an exemption.

FOIA's Nine Exemptions

5. First, two exemptions do not apply to NSA information. FOIA Exemption 8 states that FOIA does not apply to matters related to the condition of financial institutions, when such materials are provided to, obtained, or generated by an agency responsible for the supervision of financial institutions. 5 U.S.C. § 552(b)(8). FOIA Exemption 9 states that FOIA does not apply to geological and geophysical information and data, including maps, concerning well. 5 U.S.C. § 552(b)(9). Neither of these provisions have anything to do with NSA's missions. Therefore, they need not be further consulted or explained.

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6. Second, Exemption 7 protects information compiled for law enforcement purposes if one of six identifiable types of harm can be shown. Law enforcement purposes encompass both civil and criminal statutes, as well as those statutes which authorize administrative or regulatory proceedings. For more detail on this exemption and its applicability to NSA records, contact N5P5.

FOIA EXEMPTION 1

7. 5 U.S.C. § 552(b)(1) states that FOIA does not apply to matters that are specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy, and are in fact properly classified pursuant to such executive order.

8. This provision means that NSA can withhold information that is "currently" and "properly" classified. "Currently" classified information means classified pursuant to Executive Order 12958. Executive Order 12958 provides the current structure for assuring that national security information is protected from unauthorized disclosure. Therefore, if information is classified pursuant to Executive Order 12958 it is "currently" classified.

9. "Properly" classified has two components: Procedural and substantive. "Properly" classified means that national security and foreign relations information has been reviewed by an appropriate classification authority, and this authority has determined that the disclosure of the information could reasonably be expected to cause damage to the national security.

10. The nature of the damage to the national security determines the classification level of the information, and determines who is the appropriate classification authority. E.O. 12958 §§ 1.3 and 1.4. For example, information classified at the TOP SECRET level involves information the disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. E.O. 12958 § 1.3. The appropriate classification authorities to classify information at the TOP SECRET level include the President, agency heads and officials designated by the President, and officials delegated this authority by the foregoing persons. E.O. 12958 § 1.4.

11. Equally important, information may not be classified to conceal violations of the law, to prevent embarrassment to a person or agency, to restrain competition, or prevent or delay the release of information that does not require protection in the interest of national security. E.O. 12958 § 1.8.

12. Exemption 1 may apply in the following example: Requester seeks information about NSA's field site locations, NSA's field site locations involve intelligence activities, a category of information which is available for classification, E.O. 12958 § 1.5(c). The disclosure of NSA field site locations, or even their existence, may reasonably be expected to cause damage to the national security. Therefore, field site information can be classified pursuant to E.O. 12958. As a result, the Agency may withhold the location of its

field sites because the location is a currently and properly classified matter, or the Agency may state that a site's existence or nonexistence is a currently and properly classified matter.

13. An agency may, as the preceding paragraph states, refrain from disclosing the existence or nonexistence of certain information when this information's existence or nonexistence is classified. This process is called a Glomar denial. Glomar denials apply in other exemption categories, but they are prevalent in the Exemption 1 context.

FOIA EXEMPTION 2

14. 5 U.S.C. § 552(b)(2) states that FOIA does not apply to matters that are related solely to the internal personnel rules and practices of an agency.

15. This provision means the Agency may withhold information when disclosure of the information would risk the circumvention of a statute or regulation. The foregoing information is known as "low 2" and "high 2" information, respectively.

16. The use of this exemption may occur when a requester seeks records from the Office of Security (S4) about his or her polygraph examination. A polygraph examination report may reveal certain testing or technical procedures used by S4 when it screens applicants and employees. The disclosure of this information may permit the requester to obtain information which would permit him or her to circumvent the polygraph examination process. This information is exempt from FOIA under the (b)(2) exemption.

FOIA EXEMPTION 3

17. 5 U.S.C. § 552(b)(3) states that FOIA does not apply to matters that are specifically exempted from disclosure by statute, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld.

18. This means that an agency may withhold information when other federal statutes permit non-disclosure. The NSA has its own non-disclosure statute. The National Security Agency Act of 1959, Public Law 86-36, Section 6, states that nothing in the National Security Agency Act of 1959 or any other law shall be construed to require the disclosure of the organization or function of the NSA, of any information with respect to the activities of the NSA, or of the names, titles, salaries, or number of the persons employed by the NSA. In short, the NSA may withhold information which would reveal its missions, activities, organizational structure, and information concerning its employees.

19. There are many other federal non-disclosure statutes. But Public Law 86-36 is the Exemption 3 non-disclosure statute the Agency

uses to withhold information related to it.

20. The use of Exemption 3 together with Public Law 86-36, Section 6 may occur when a requester seeks an Agency record that contains the following information: Francis O. Iannini (a hypothetical Agency employee) and medical review of Mr. Iannini for a PCS to NSA field site, Maverick (fictional site). The foregoing sentence contains an Agency employee's name and an Agency activity (field site), coupled with an Agency function (PCS medical review). This information may be withheld by the Agency. The name of the employee and medical information, however, would be releasable to the Agency employee, i.e., Francis Iannini, if the Agency record is requested by the employee.

21. This illustrates how the FOIA cannot be used to withhold information releasable under the Privacy Act. This is a significant issue when reviewing FOIA requests. It is raised here only for informative, rather than explanatory purposes. If you desire further explanation of this point, please contact N5P5.

22. The foregoing also illustrates when two exemptions may overlap. The existence or nonexistence of the field site, Maverick, may be classified and, therefore, Exemption 1 would also cover it.

FOIA EXEMPTION 4

23. 5 U.S.C. § 552(b)(4) states that FOIA does not apply to matters that are trade secrets and commercial or financial information obtained from a person and privileged and confidential. Therefore, this exemption has two components: (1) trade secrets, and (2) information which is (a) commercial or financial, and (b) obtained from a person, and (c) privileged or confidential.

24. Trade secrets, within the FOIA context, have been described by the federal courts as a secret, commercially valuable plan, formula, process, or device which is used for the making, preparing, compounding, or processing of trade commodities and which may reasonably be the end product of either innovation or substantial effort. In short, a trade secret is a thing unknown to the world of commerce, used to complete or make another thing, and the unknown thing is the product of a substantial amount of research and development monies or ingenuity. For illustrative purposes only, a trade secret might be a restaurant's secret sauce.

25. The second component of Exemption 4 protects information which is (1) commercial or financial, (2) obtained from a person, and (3) privileged or confidential. The first two prongs described above are self-explanatory, but the last component requires some explanation.

26. Information is confidential when disclosure of the information is likely to cause: (1) impairment of the government's ability to obtain necessary information in the future, or (2) substantial harm to the competitive position of the person who provided the

information to the government. Most federal courts have combined "privileged" under "confidential" when considering whether commercial or financial information is privileged or confidential. In effect, no consideration is given to whether the information is privileged; what matters is whether it is confidential.

27. The use of the trade secret/exemption 4 non-disclosure theory may be used in a situation when a defense contractor submits technical data which reveals how the contractor can develop and use a new product, and no other defense contractor has this capability. The data associated with this capability is commercially valuable, unavailable to others, and it most likely is the end product of both innovation and substantial effort. As a result, the trade secret/exemption 4 non-disclosure theory would permit the Agency to withhold the data.

28. The use of the confidential-information/exemption 4 non-disclosure theory may occur when an Agency consultant provides a report to the Agency recommending that the Agency obtain a cheaper and more efficient telephone system. This is commercial information, and receipt of this kind of valuable information by the government agency may be impaired if consultants believe that their reports or recommendations were freely available to the public.

29. The other use of the confidential information/exemption 4 non-disclosure theory may occur when a defense contractor submits a bid on a contract. The bid contains the contractor's business practices and bidding strategy. If the contractor's competitors request access to the bid, the contractor may contend that disclosure of the bid may cause it to suffer a substantial likelihood of substantive harm to its competitiveness. The Agency or a federal court may, if the contractor's evidence is sufficient, withhold the information.

FOIA EXEMPTION 5

30. 5 U.S. C. § 552(b)(5) states that FOIA does not apply to matters that are inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency.

31. This exemption means that agency records disseminated within the agency or to another agency may be protected from disclosure if they would be considered privileged documents within the civil litigation discovery context. Congress, the courts, and state agencies are not agencies under the FOIA.

32. Generally, three privileges arise most often in the civil discovery context: deliberative process privilege, attorney work product privilege, and attorney-client privilege. These privileges constitute the information available for protection under Exemption 5. The deliberative process privilege extends to deliberative records exchanged by and between agencies and by and between individuals or organizations within an agency. For the NSA, "agency" means the Department of Defense. These records are protected until an official agency decision is made. Then, the agency's decision together with its supporting evidence may be made available to the

public, unless another FOIA exemption is available to prevent disclosure. In short, an agency's deliberations, thoughts, opinions, and preliminary decisions regarding a matter are protectible under FOIA Exemption 5. The facts relied on by the agency to support its decision, however, must be released, unless otherwise exempt.

33. The deliberative process privilege is intended to protect the free flow of ideas to, from, and between those responsible for official agency decisions. This privilege requires that the record be predecisional and that it be part of the deliberate process, e.g., it makes recommendations or expresses opinions on policy matters.

34. The attorney work-product privilege is applied to records which are prepared by an attorney in contemplation of litigation. There must exist some articulable claim that litigation is probably or imminent. The record does not have to be created by an attorney; records of the attorney's agents (experts, consultants, investigators, paralegals, etc.) may be protected under this privilege.

35. Next, the attorney-client privilege protects confidential communications between an attorney and her client about a legal matter for which the client has sought legal advice. There need not be any probable or imminent litigation. This privilege extends to facts, opinions and advice generated by, derived from, or based upon a client's communication to her attorney. As a result, communications between attorney and client and between attorney and her agents are protected from disclosure under the FOIA.

36. The following illustrates how all three privileges may apply to an agency record. The Director seeks a legal opinion about the validity of a proposed Agency regulation. The Director, the Deputy Director for Support Services, Chief S, and S2 personnel exchange several drafts of the proposed regulation. Comments from interested decision-making parties are given to the Office of General Counsel in a memorandum. The Office of General Counsel informs the Director that the regulation may be adopted and implemented. The Director issues the regulation.

37. A requester seeking any of the foregoing information would only be able to obtain the regulation. The deliberative process privilege does not protect final agency decisions. Consequently, the final regulation would not be protected. The drafts of the regulation would be protected because they were made prior to an agency policy decision and recorded the deliberations of agency personnel. The Office of General Counsel's legal opinion is protected by the attorney work-product privilege because it contains the mental impressions, personal beliefs, strategy, and legal theories of the Agency's attorneys. Last, each communication to the Office of General Counsel regarding this regulation is privileged under the attorney-client privilege and protectible under FOIA exemption 5 because they are communications from Agency personnel seeking legal advice from the Agency's legal representatives.

FOIA EXEMPTION 6

38. 5 U.S.C. § 552(b)(6) states that FOIA does not apply to matters that are contained in personnel and medical files and similar files

when their disclosure would constitute a clearly unwarranted invasion of personal privacy.

39. This exemption means that information may be withheld when it identifies an individual, is contained in a personnel, medical, or similar file, and disclosure of the information would constitute a clearly unwarranted invasion of personal privacy. The information must reveal, expose, or disclose an individual's identity. Personnel and medical files are self-explanatory. "Similar files" is liberally construed to include all information which applies to a particular individual, i.e., the individual is the subject of the information. Exemption 6 was invoked in the following case. The New York Times sought release of audio recordings of the last moments of the Space Shuttle Challenger crew. A federal appeals court determined that exemption 6 applied to protect these recordings because the recordings contained information which applied to a particular individual and, therefore, they were "similar" files. The information was the sound and inflection of the Challenger crew's voices during the last seconds of the mission.

40. Once the information is determined to be in a personnel, medical, or similar file, an agency must determine whether disclosure of the information would constitute a clearly unwarranted invasion of personal privacy. The outcome depends on a balancing of the public's right to disclosure against the individual's right to privacy. The public interest in disclosure is determined by considering whether disclosure of the information would reveal the performance, or lack thereof, of an agency's duties. The individual's right to privacy is determined by considering whether the individual is a living human being and whether she has a reasonable expectation of privacy. An individual's expectation of privacy must be a privacy interest that society is prepared to recognize or has already been established by law. If there is no public interest or, conversely, no right to privacy, there is no need to use the balancing test. If there is a privacy interest in disclosure, an agency must engage in the balancing test.

41. The balancing test attempts to answer which will be greater: the harm to the individual or the benefit to the public. Exemption 6 strongly favors the public benefit in disclosure because this exemption requires that the harm to the individual constitute a clearly unwarranted invasion of privacy. Still, federal courts scrutinize vigorously the impact of disclosure upon an individual's privacy.

42. The use of FOIA Exemption 6 may occur in the following situation: requester seeks the personnel records of a deceased Agency employee. These records contain, among other things, information concerning family counseling sessions, physical and emotional abuse within the family, etc. The deceased person no longer has privacy rights. The decedent's family, however, may have a privacy interest in information about the decedent. Next, assuming that a public interest exists in information about the decedent, the Agency must weigh the public and privacy interests as part of its "release or withhold" decision. The requester is a psychologist who is writing a book on stress. The requester's identity and purpose are noted here to illustrate and underscore the fact that agencies may not consider a requester's identity or purpose. The United States Supreme Court has made this very clear to all federal agencies. The Court's rationale is that FOIA states that any person may request records and no restriction, limitation, or condition is placed on this rule. Thus, the requester is not given any special consideration because he is requesting information for a "legitimate" purpose as opposed to a requester who does not share his motivation for requesting the records or one who does not have a motive.

CONCLUSION

43. I hope that this memorandum has contributed to your understanding of FOIA's exemptions. If you have any questions regarding this subject, please contact DJPS at 963-5827.

[Redacted]

Attorney
Office of Assistant General Counsel
(Civil Litigation & Administration Law)

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Related Links

Information Owner: Pamela Phillips & Anne Hill, DJP4, 963-5827, ([email](#))
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Last Modified: January 22 2009

Last Reviewed: July 14 2008

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Subject: Policy On-Line, 7 April 1998

Date: Tue, 7 Apr 1998 14:32:39 GMT

From: Automated Agency E-mail Process <agencyall@n.nsa>

Newsgroups: admin.announce

Classification: ~~FOR OFFICIAL USE ONLY~~

(U) Approval to release to Agency-wide distro granted by DDP, JoAnn Grube, the Office of Policy.

POLICY ONLINE (U)

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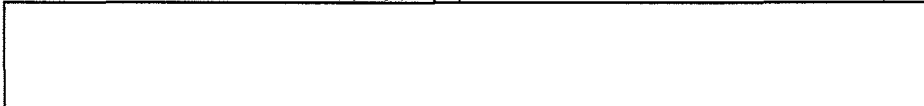
(U) AN UPDATE ON POLICY ISSUES AND ACTIONS PROVIDED BY N5P, THE OFFICE OF POLICY

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-- Today's Topic(s) --

Non - Responsive

1. **FOIA and IG Procedures (U)**



Subject: **FOIA and IG Procedures (U)**

(U) The following came in to POL anonymously:

Can you please let me know why it is that when I seek information pertaining to procedures of the NSA Inspector General's Office (IG) I am told that they have such procedures but that I can only obtain them from an official **FOIA** request? Is this really true? Why is it that an internal NSA document would not be provided to an NSA employee without having to go through the formality of **FOIA**? It would seem to me, that if we would provide a document to an employee through **FOIA** anyway, that we would not waste the taxpayers money (all the administrative costs associated with **FOIA**) in order to get that document? Please advise.....

POLICY ON-LINE ANSWER: (U) Requests for OIG documents or information on OIG's policies should be directed to the OIG at 963-3544(s), or ig@nsa, and will be addressed on a case-by-case basis. However, N5P has responsibility for **FOIA** and is pleased to discuss some of the general issues involved.

(U) It is important to know that just because a record (in this case, IG procedures) is requested under the **FOIA** does not mean the record will be released to the requester. The **FOIA** allows agencies to withhold information from release when the information meets the exemption criteria outlined in the law. So a person (Agency employee

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or anyone else in the world) is free to request the information, but they will only receive the material they have requested if the material is not protected by FOIA exemption. For an in-depth discussion of the FOIA's exemptions, check out "An Overview of the Freedom of Information Act's Nine Exemptions," at:

[Redacted]

(U) Without a careful review of any Agency record, we have no way of knowing whether the record is releasable, or is exempt from release, under the FOIA.

(U) You might be interested in knowing that if you do ask an office for information, and they provide it to you, the information is still the property of the Agency, and you are not free to do with it as you wish. However, if information is released to you under the FOIA, the material is then considered public, and you may take it out of the building and consider it yours to do with as you choose.

[Redacted] NSP, [Redacted]@n.ssa, 963-3083, 4/7/98, 1998 04 07)

(b)(3)-P.L. 86-36

(b) (3) - P.L. 86-36

Subject: Policy On-Line, 18 July 1997
Date: Fri, 18 Jul 1997 14:52:12 GMT
From: [redacted]@n.nsa [redacted]
Newsgroups: admin.policy

POLICY ONLINE (U)

(U) AN UPDATE ON POLICY ISSUES AND ACTIONS PROVIDED
BY N5P, THE OFFICE OF POLICY

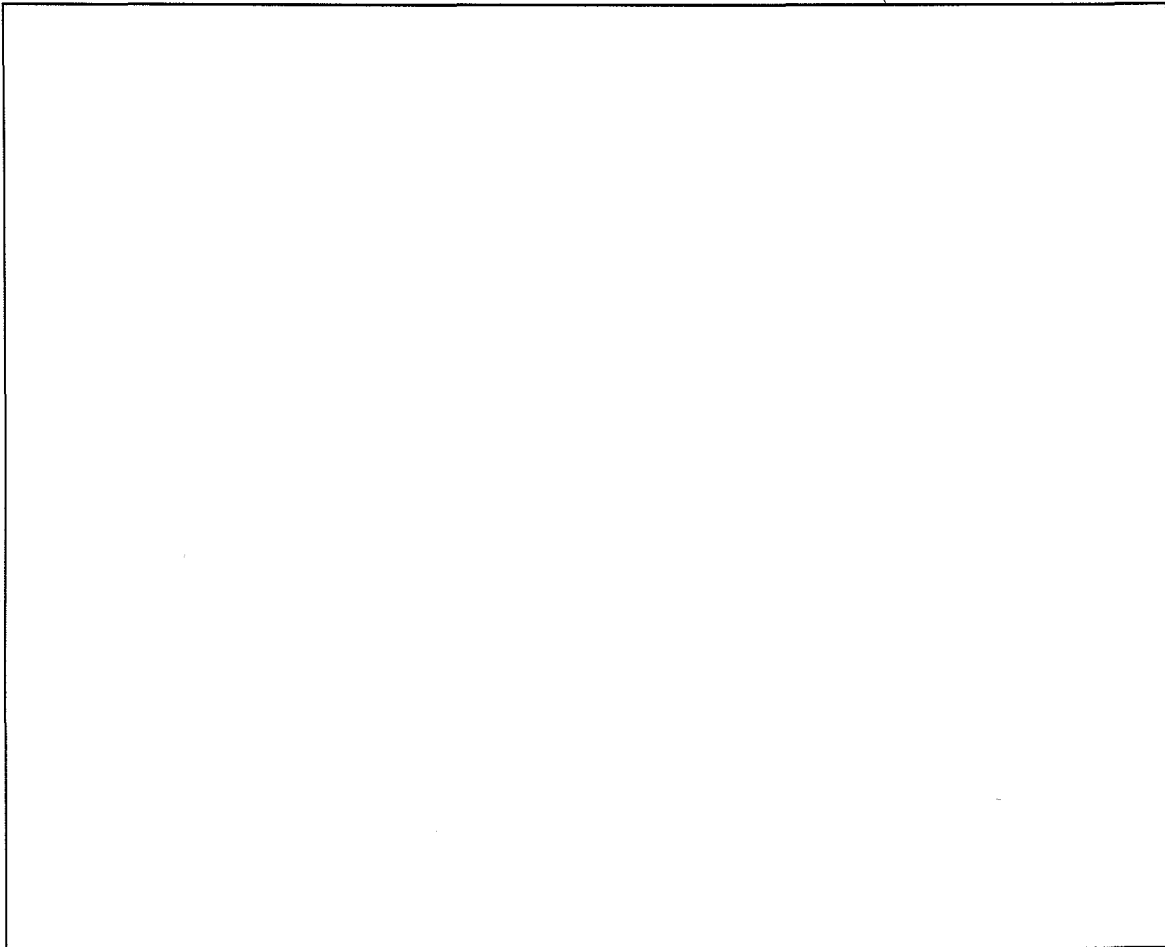
Date: 07/18/97

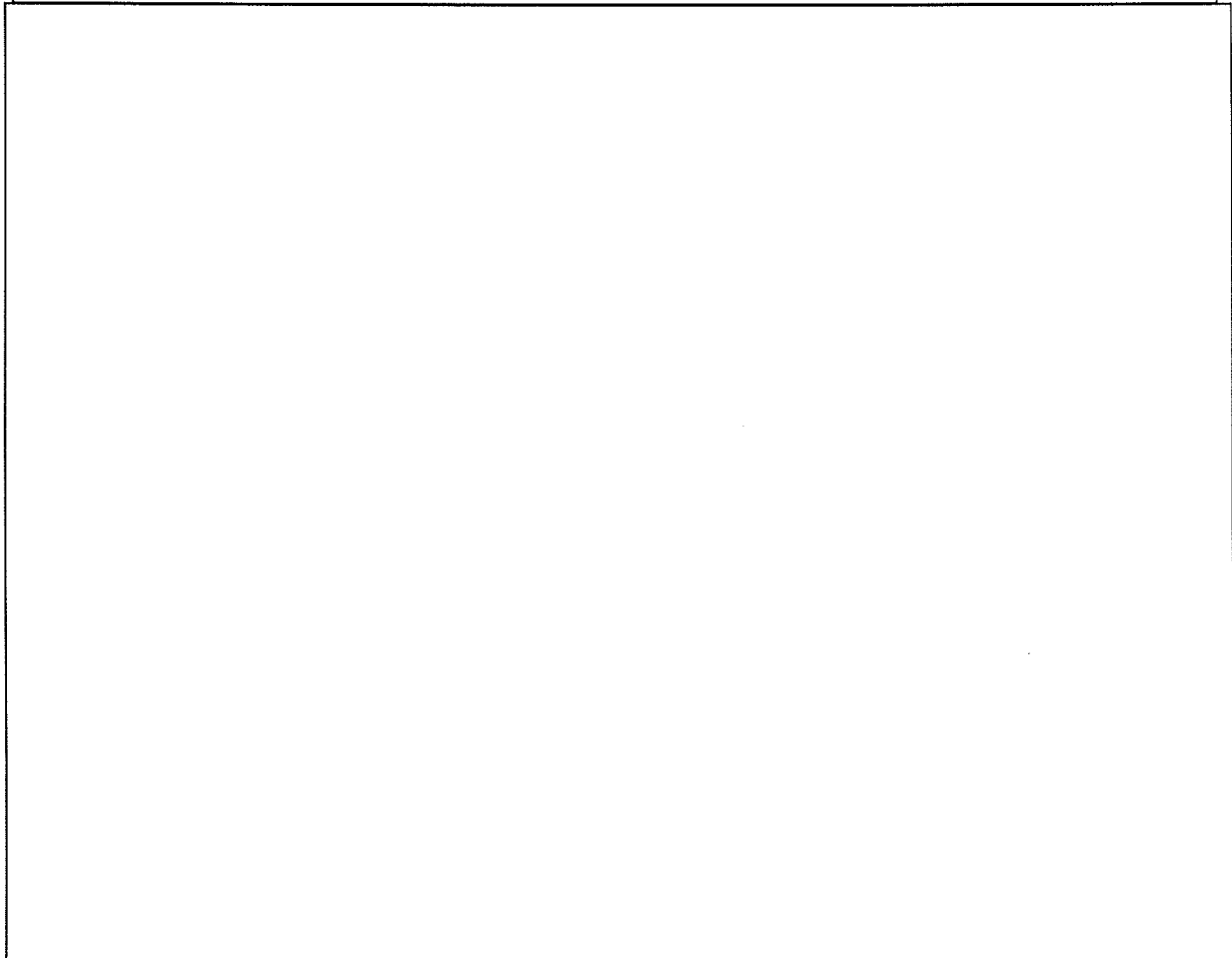
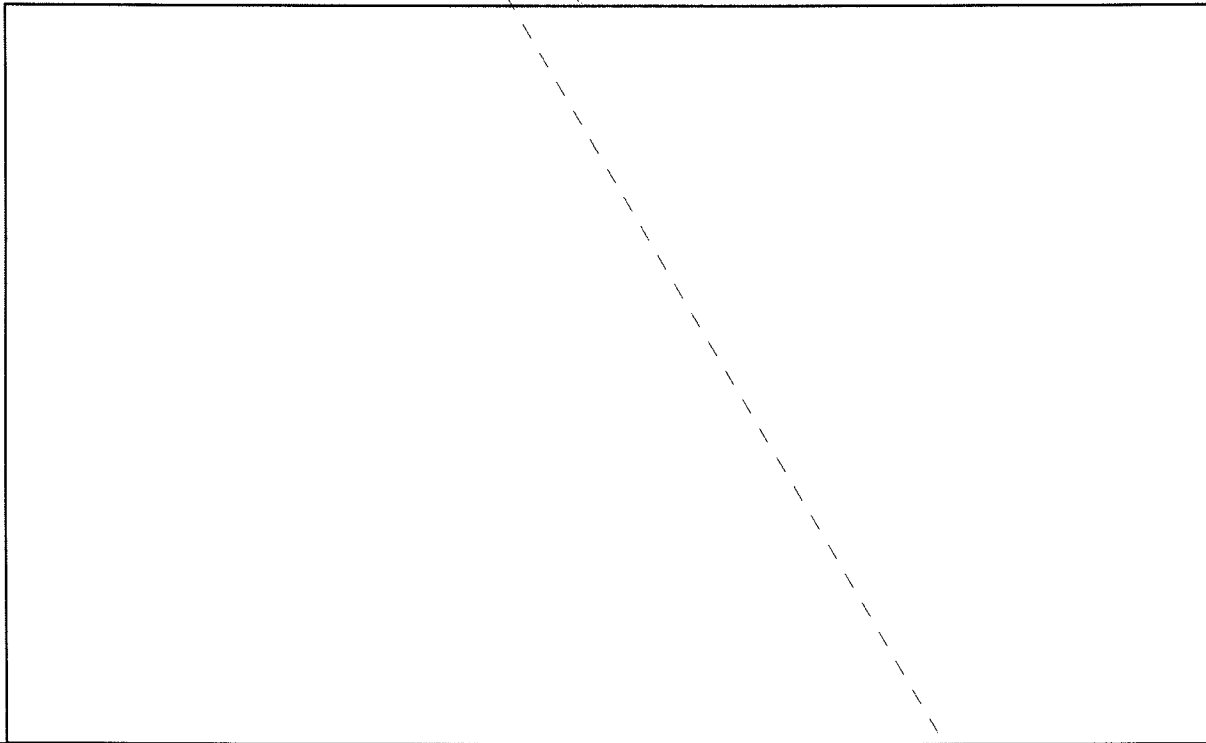
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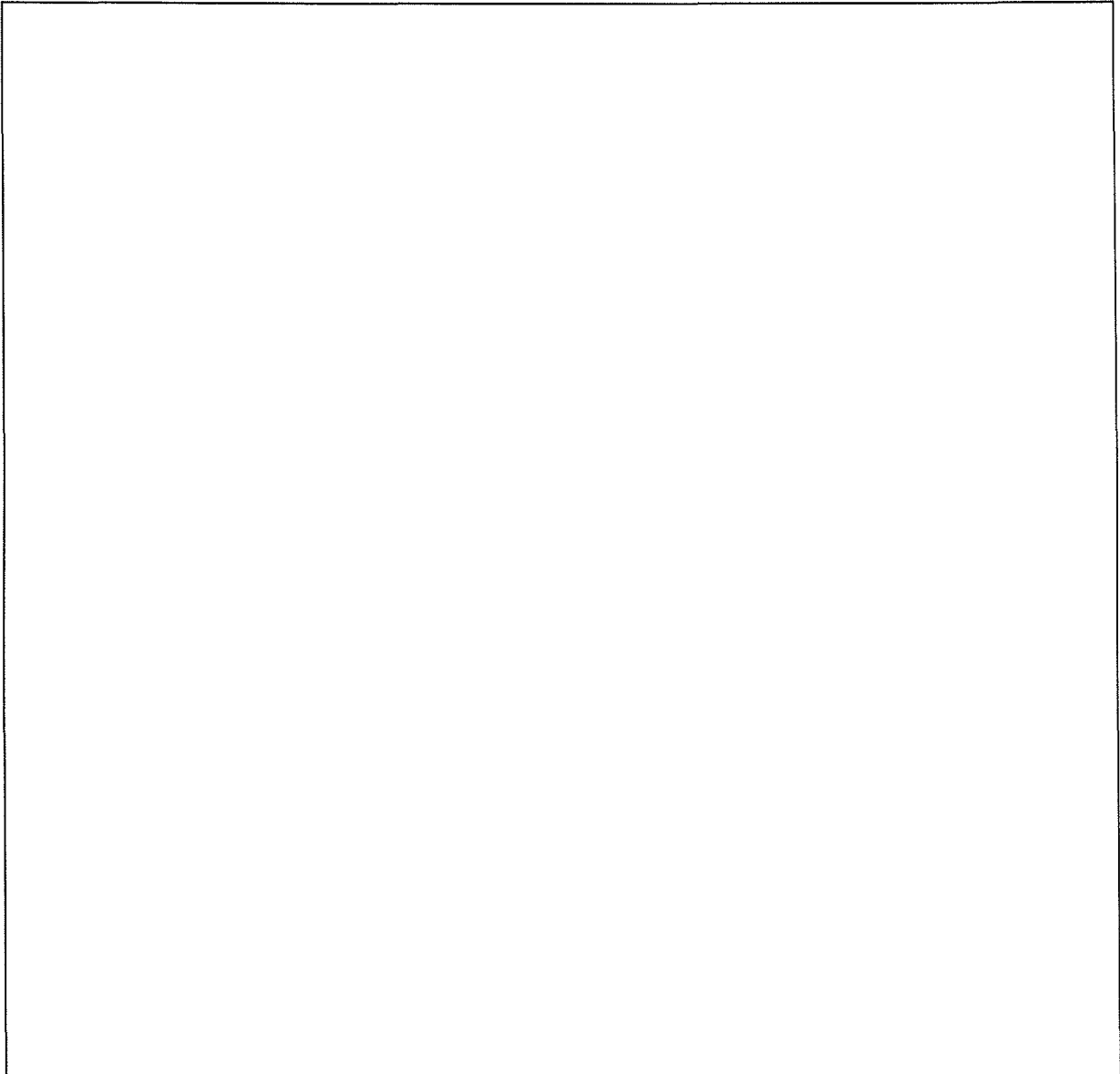
-- Today's Topic(s) --

[redacted]

2. FOIA Follow-up Issues (U)







Subject: **FOIA** Follow-up Issues (U)

Non - Responsive

Classification: UNCLASSIFIED

(U) On 14 July 1997 we posted an article entitled "**FOIA** Searches and Estimates." We heard from a few people who wondered about the possibility of the Agency being flooded with Freedom of Information Act (**FOIA**) requests, in effect causing us to spend inordinate amounts of resources responding to those requests as opposed to spending those resources on the accomplishment of our mission, or, as one reader put it: "we could spend all of our time servicing them [**FOIA** requests] and not doing any 'real' work." In addition, the article prompted some comments from a few Agency employees who are awaiting responses to **FOIA** and Privacy Act (PA) requests.

(U) The Freedom of Information Act is a law which requires federal executive agencies and departments to respond to requests from the public for government records. Congress enacted the FOIA in 1966, recognizing that the public has the right to be informed about the government's activities. There are exceptions to the release of information, and the exemptions included in the law are applied by my office, as appropriate. But the exemptions do not relieve us of the requirement to perform the searches, collect and review the material for release.

(U) One of the intentions of Policy On-Line is to raise the consciousness of NSA/CSS employees with regard to certain issues. The FOIA is one of those issues, and that's why I wrote the article that appeared on 14 July 1997. Because we are hearing your concerns about the FOIA, I know we have succeeded. You now understand that while NSA is certainly charged with unique responsibilities as a DoD component and a member of the intelligence community, we must also adhere to the laws binding on all federal agencies. To put it succinctly, the FOIA is a "real" part of our mission as a US Agency. It is not our only "real" work, to be sure, but a job which must be factored in to the other duties we are required to perform, and given the time requirements of the law, this must be done on a priority basis. That may place FOIA actions ahead of other important tasks.

(U) The FOIA office anticipates the receipt of approximately 1,000 requests this year, as opposed to about 850 in 1996. (In fact, we have been seeing an annual increase in FOIA requests since about 1987, when the amount of publicity received by NSA began to increase.) Some will be multiple requests from the same requesters, but most will be single requests. Many of the requests can be handled completely by the FOIA office without input from any of NSA's Key Components. In fact, of the approximately 850 requests for information received in 1996, only 90 were sent to DO for action of any type.

(U) With regard to the chance of our being bombarded with FOIA requests, that possibility has always existed, but it has yet to happen. There are some very sophisticated FOIA requesters out there, and had they wanted to "bring us to our knees," they could already have attempted to do so. Obviously, if that situation were to occur, we would have to deal with it, but concerning ourselves with it before it happens will only drain an already stressed FOIA process. We are dealing with the most recent changes to the law by increasing the number of people who work FOIA in the Office of Policy (eight new billets), by automating the process as much as possible, and by urging the entire Agency workforce to be as earnest as possible in supporting this requirement.

(U) Regarding the length of time it takes to receive a response once a FOIA (or PA) request has been filed, in fairness to all requesters, NSP5 has a "first-in, first out" policy. This policy is in keeping with guidelines issued by the Department of Justice. Requests are handled in the order in which they are received. But, in a sense, once the search and collection of the documents has finished, the work on a particular FOIA case has only just begun. Painstaking analysis of each document and of all documents responsive to a request is required to insure that sensitive material is protected. And this

analysis cannot even begin until that particular case comes to the point in the "first-in, first out" queue at which it is to be worked. To further complicate the matter, position in the queue is also affected by court-ordered case expedition, which requires immediate handling, or by referrals of NSA documents held by other agencies and responsive to their own FOIA requests, which are inserted into the queue at the date the case was opened by the other agency (this is standard FOIA practice). So, as I mentioned in the preceding paragraph, N5P5's resources (i.e., its number of people, its computers, etc.) have not been able to keep up with the number of requests the Agency receives. We are working very hard to remedy that situation.

(U) N5P5 is currently advertising for eight more people in light of the Critical Issues Group's recognition that more resources are necessary in order to meet this challenge. Once these eight positions are filled and the employees have the chance to get over the learning curve (which, as you can imagine, is considerable), we will no doubt see some improvement in the backlog of FOIA and PA cases.

(U) Working FOIA and PA cases is fascinating, rewarding, and dynamic. If you are grade 11, 12, or 13, are interested in making a career change, and you think you'd enjoy serving the public by meeting the requirements of these statutes, once the 28 July 1997 vacancy announcements are published, check out vacancy #97HQS1314.

~~(FOUO)~~ The responsibility of ensuring that NSA complies with the law lies with the Office of Policy. The reason for my Policy On-Line piece was to sensitize the Agency population to ALL employees' responsibilities under the law and the need to provide timely and appropriate support to the FOIA staff, and ultimately, to our prime customer, the public.

(Jim Cavanaugh, N5P, jpcavan@nsa, 963-3083, 7/18/97, 1997 07 18)

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~~(FOUO)~~ Policy On-Line is intended to provide a forum in which policy issues may be raised and discussed. We will endeavor to answer your questions as quickly as possible. Questions may be posted on ENLIGHTEN to admin.policy, e-mailed to n5online@nsa, submitted by telephone to the Office of Policy on 963-5178 or 688-6798, or submitted in writing to N5P in room 2B8118 (OPS 2B).

~~(FOUO)~~ Policy On-Line is a service of N5P and is edited and coordinated by [redacted] N5P6, [redacted]@nsa.

Derived From: NSA/CSS 123-2
Dated 3 Sep 91
Declassify On: Source Marked "OADR"
Date of Source: 3 Sep 91

"Tell us how we're doing."

[NO-NEWS]

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(b) (3) - P.L. 86-36

Subject: Policy On-Line, 14 July 1997
Date: Mon, 14 Jul 1997 16:40:55 GMT
From: [redacted]@n.ssa [redacted]
Newsgroups: admin.policy

POLICY ONLINE (U)

(U) AN UPDATE ON POLICY ISSUES AND ACTIONS PROVIDED
BY NSP, THE OFFICE OF POLICY

Non - Responsive

Date: 07/14/97

-- Today's Topic(s) --

1. FOIA Searches and Estimates (U)

[redacted]

Subject: FOIA Searches and Estimates (U)

Classification: UNCLASSIFIED

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(b) (3) - P.L. 86-36

(U) Back on 6 February 1997, Policy On-Line included an article entitled "FOIA and Agency Records: Your Obligations Under the Law." You can access the article at

[redacted]

As of October 1997, new timelines regarding the FOIA will kick in. The law was revised in October 1996. NSA must adhere to these new requirements, and your cooperation is necessary in order to ensure the Agency's compliance.

(U) Under the provisions of the Freedom of Information Act, any member of the public may request information from government agencies. Agencies that receive such requests are bound by law to perform reasonable searches, estimate the costs of their searches, and produce documents that are responsive to the request unless the information falls within the scope of one of nine exemptions. Agencies are required to respond to the requester in a specified period of time.

(U) With the amendments to the law becoming effective in October, the Agency will have more time to respond to these requests (20 working days instead of 10, extendable to 30 as opposed to 20), we will no longer be able to rely on our backlog as an excuse for asking for additional time when sued by a requester. Instead, cases which cannot be completed in the statutory time must now be negotiated with the requester to arrive at a mutually agreeable completion date. In addition, we as an agency must show substantial progress in reducing our backlog,

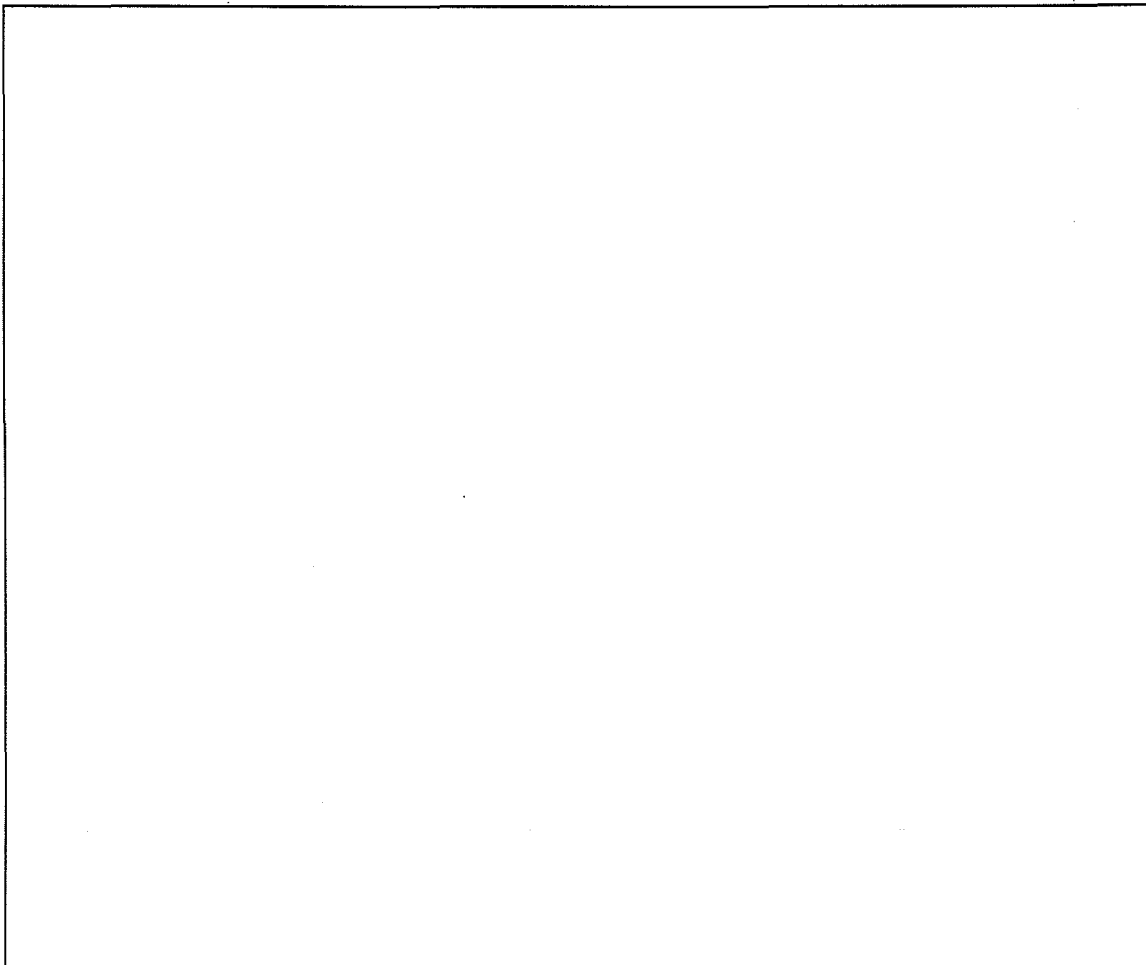
or we could be collectively subject to severe judicial penalties (including judicial release of documents before we can take the necessary actions to redact sensitive information).

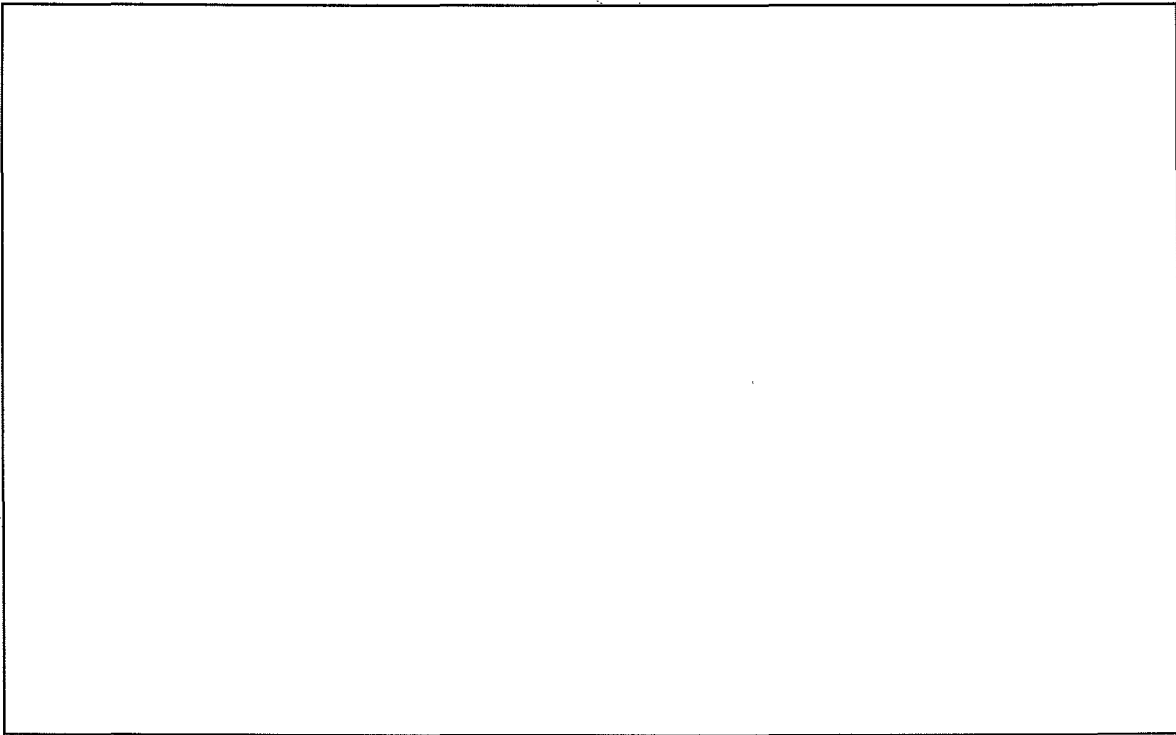
(U) In the past, there have been times when offices throughout the Agency (mine included) have been less than aggressive in fulfilling the estimate and search requirements of the law. With the changes made to the FOIA this year, that can no longer be acceptable. Each and every one of us must do our utmost to meet the deadlines imposed on FOIA estimates and searches on every case which reaches our office. Given the potential legal ramifications that could accrue to the Agency if we fail to perform this vital service, none of us can afford to be less than fully and promptly responsive to the requirements of the FOIA.

(U) As the Deputy Director of Policy, I will appreciate your most earnest efforts in supporting this important requirement for which the American people are our chief and most deserving customer. Questions about your obligations under the FOIA should be referred to N5P5, FOIA and PA Services, at 963-5827.

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(Jim Cavanaugh, N5P, jpcavan@nsa, 963-3083, 7/14/97, 1997 07 14)





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~~(FOUO)~~ Policy On-Line is intended to provide a forum in which policy issues may be raised and discussed. We will endeavor to answer your questions as quickly as possible. Questions may be posted on ENLIGHTEN to admin.policy, e-mailed to n5online@nsa, submitted by telephone to the Office of Policy on 963-5178 or 688-6798, or submitted in writing to N5P in room 2B8118 (OPS 2B).

~~(FOUO)~~ Policy On-Line is a service of N5P and is edited and coordinated by [redacted] N5P6, [redacted]@nsa.

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"Tell us how we're doing."

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Subject: Policy On-Line, 20 April 1998

Date: Mon, 20 Apr 1998 16:07:28 GMT

From: [redacted]@n.ssa [redacted]

Newsgroups: admin.policy

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POLICY ONLINE (U)

(U) AN UPDATE ON POLICY ISSUES AND ACTIONS PROVIDED
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-- Today's Topic(s) --

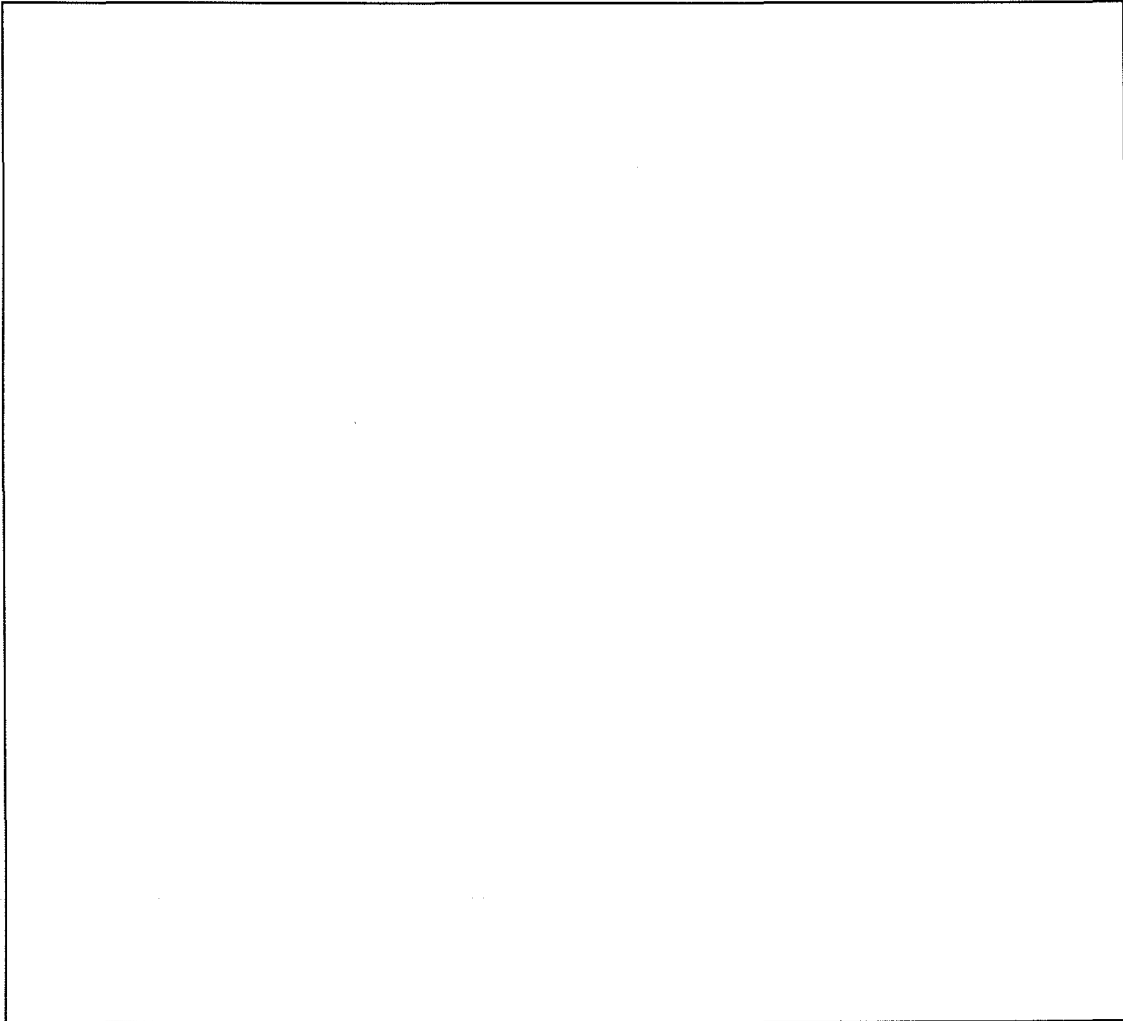
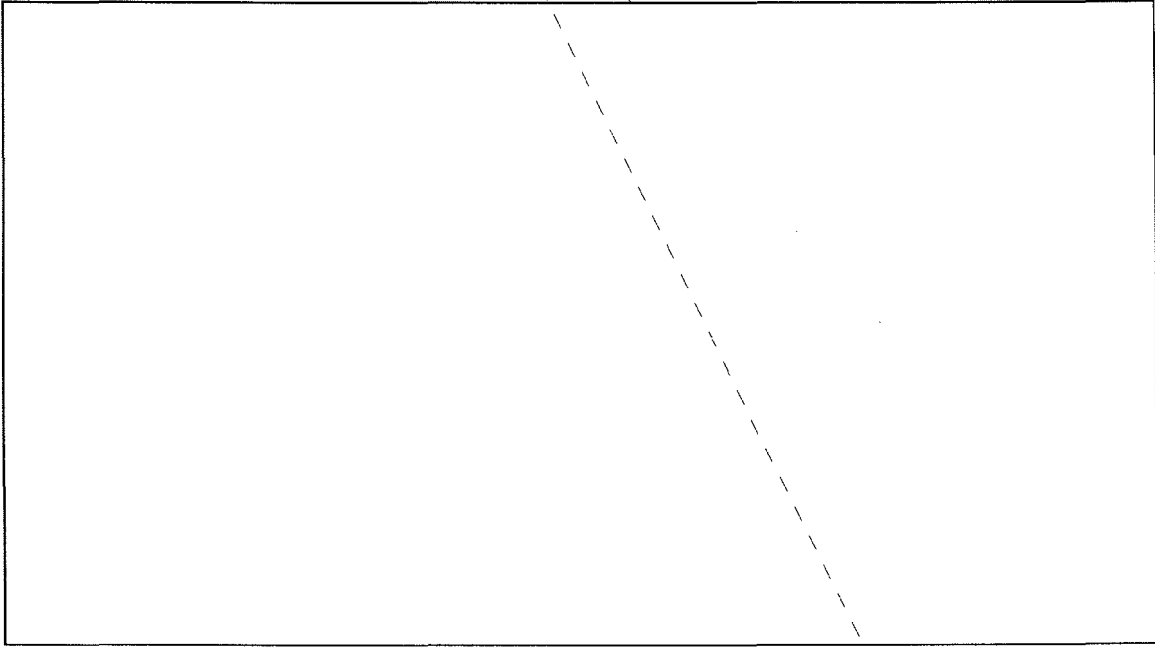
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3. ENLIGHTEN Postings and the FOIA (U)

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Non - Responsive

Non - Responsive



Subject: ENLIGHTEN Postings and the FOIA (U)

(U) It has been noted that discussions continue on ENLIGHTEN about issues not related to employee's jobs and that some of these discussions include references which, if released to the public, would cause embarrassment to the Agency and/or the individuals involved. Besides recognizing the issues of misuse of government resources and fraud, waste and abuse, we have posted numerous articles about creating records which may be released to the public in response to a Freedom of Information Act (FOIA) request.

(U) The question has been asked as to how such records would be retrieved pursuant to a request for records under the FOIA. When an FOIA request is received by N5P5, a search, reasonably calculated to locate responsive records, is conducted. This means that N5P5 determines which organizations within NSA might hold responsive material and tasks the organizations to conduct a search. Each organization must search all types of media. If personnel in an organization reasonably believe that e-mails, WEBWORLD pages, or ENLIGHTEN postings may contain responsive information, those electronic records must be searched. In addition to conducting the search, the responding organization must notify N5P5 of the strategy used in conducting the search so that the FOIA office can be assured that a proper search was conducted. The method of search must be documented because a requester may challenge the completeness or accuracy of an agency's search.

(U) The bottom line question here is: Will the unnecessary, not work-related (and sometimes sarcastic, flippant, and disrespectful) comments made by some ENLIGHTEN users be located in a search for records under the FOIA? The answer is: If we know where to look for it and it's there when a request for such material is received, YES!

(U) Every federal employee has FOIA obligations. You may want to check out our POL article of 6 February 1997 entitled "FOIA and Agency Records: Your Obligations Under the Law." To quote just a portion of that article:

"..if you create a record on an Agency electronic system (e.g., WEBWORLD, ENLIGHTEN) or import information or data from the Internet and place it in an Agency electronic system, you have created an Agency record which is susceptible to request and review under the FOIA."

(Rona Lerner, N5P5, rllerne@n.nsa, 963-5827, 4/20/98, 1998 04 20)

(U) Policy On-Line is intended to provide a forum in which policy issues may be raised and discussed. We will endeavor to answer your questions as quickly as possible. Questions may be posted on ENLIGHTEN to admin.policy, e-mailed to n5online@nsa, submitted by telephone to the Office of Policy on 963-5178 or 688-6964, or submitted in writing

to N5P in room 2B8118 (OPS 2B). In addition, you may access the Policy On-Line Home page at:

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(U) The Agency's other on-line services may be accessed as follows:

CIO/L1 On-Line -

[Redacted]

ENLIGHTEN's comp.security

HR On-Line -

[Redacted]
ESS 763; ENLIGHTEN's admin.personnel; hronline@nsa

Intelligence Reporting On-Line (IRPOL) -

[Redacted]

ESS 149; irpol@nsa

Security On-Line

ESS 147; ENLIGHTEN's admin.security; s4online@nsa

~~(FOUO)~~ Policy On-Line is a service of N5P and is edited and coordinated by [Redacted] N5P, [Redacted]@n.nsa.

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(b) (3) - P.L. 86-36

Subject: Policy On-Line, 11 June 1998

Date: Thu, 11 Jun 1998 10:28:51 GMT

From: [redacted]@n.nsa [redacted]

Newsgroups: admin.policy

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POLICY ONLINE (U)

(U) AN UPDATE ON POLICY ISSUES AND ACTIONS PROVIDED
BY NSP, THE OFFICE OF POLICY

-- Today's Topic(s) --

1. Agency Records and the FOIA (U)

Subject: Agency Records and the FOIA (U)

(U) First of all, we have to warn you that this is a really long article. Actually, it could be much longer, so consider this to be the abbreviated version!

(U) A few weeks ago, there was some on-line discussion regarding FOIA records and the fact that ENLIGHTEN postings may be searched for records responsive to FOIA requests. That led to some discussion about the archiving of ENLIGHTEN postings and whether or not the fact that ENLIGHTEN postings expire is OK.

(U) In order to address these questions, we must first point out that there are a couple of different kinds of records, and that we all need to be sure which one is being talked about in any given discussion. "Records" means one thing under the Federal Records Act, and another under the FOIA.

(U) The FOIA is a "access-to-records" statute which may be used by any person who is interested in obtaining records from NSA. "Records" are either created or obtained by the Agency and under the Agency's control at the time of the FOIA request.

(U) The Federal Records Act is a housekeeping statute which imposes records management obligations upon federal agencies, including NSA. "Records" under the Federal Records Act include records that are appropriate for preservation or preserved because of their value. If a document exists at NSA, it is subject to the FOIA. If that same document has some value, it is subject to the recordkeeping requirements of the Federal Records Act.

(U) "Agency records" are searched in processing a FOIA request, and "Federal records" are those Agency records which meet the Federal Records Act's criteria. Our federal records are a subset of our

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07-20-2009, FOIA Case # 57996

Agency records. In other words, all of NSA's federal records are Agency records, but not all Agency records are federal records.

(U) When a FOIA request comes in to NSA, we must search all records that are under the Agency's control at the time the request was received. ENLIGHTEN postings, as records under NSA's control, would have to be searched if they could possibly contain information responsive to a FOIA request.

(U) With regard to whether or not ENLIGHTEN postings may be deleted, that's a question for the Agency's Records Management office, S541. We asked them for some information, and here's what they sent. As you read it, please remember it refers to Federal records:

(U) In response to the question regarding ENLIGHTEN postings, we should first ask, "Is it a record?" Information, even in electronic form, may not necessarily qualify as a record in accordance with 44 USC 3301. Essentially, it states records include "all books, papers, ... machine readable materials, ... regardless of form or characteristics, made or received by an agency of the U.S. Government under Federal law or in connection with the transaction of public business and preserved... as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value in them."

(U) If the item meets the criteria of a record, it should then be handled in accordance with the Agency's Records Disposition Schedules. The four Schedules provide legally-approved guidance in identifying permanent and temporary records and the amount of time prescribed for their eventual transfer or destruction. Permanent records are never destroyed. When they become inactive, no longer needed for office business, they may be transferred to the NSA/CSS Records Center until the office releases custody of those records to the NSA/CSS Archives. Temporary records, whose life span may range from immediate destruction to retention for several decades, are eventually destroyed.

(U) What if it doesn't qualify as a record? Non-records include extra copies of documents preserved only for reference purposes, stocks of publications, and items not related to the business of the agency, such as personal papers. These may be removed or destroyed at the discretion of the creator/maintainer of the information.

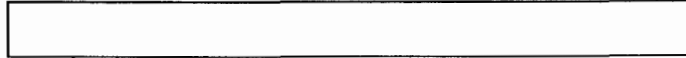
(U) Electronic records with a permanent disposition, or temporary records with long-term retention requirements, may need special care to ensure the integrity of the information. Changes in hardware and software as well as mishandling of storage media, such as floppy disks, could make information inaccessible over time. Creators/maintainers of electronic records are essentially responsible for their disposition. Long term and permanent records should reside in an accessible environment or be transferred to another medium, if appropriate.

(U) In summary, to address the initial question, "Do the records exist?" First determine if they truly are records. If so, how

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(b) (3)-P.L. 86-36

long is their retention and how can we best ensure access to the records. Electronic records issues are best resolved when the creator/maintainer, data processing, and records management work together in designing systems.

(U) For more information, contact S541, Records Management, on 972-2260, or go to:



(U) With regard to the **FOIA** and Agency records, we offer the following, originally posted on 6 February 1997, in an article entitled "**FOIA** and Agency Records: Your Obligations Under the Law." As you read it, please remember it refers to Agency records:

(U) The Freedom of Information Act (**FOIA**) requires that an agency provide the public access to its records unless the information is protected by one of nine exemptions. When a requester submits a letter to NSA requesting records pursuant to this law, **FOIA/PA Services (N5P5)** must conduct a search that is reasonably calculated to locate responsive records. This means that N5P5 must search organizations within the Agency that would most likely have responsive material. You may have already provided support to N5P5 in this important mission or you may be tapped in the future. With the recent passage of the Electronic **FOIA (EFOIA)**, we thought it would be a good time to remind employees of their obligations under the law regarding the search for material responsive to the **FOIA**. We'd like you to understand what a record is and what is expected of you as the record holder or creator.

~~(FOUO)~~ A record is any material which conveys information. Records may be paper, film, microfiche, an electronic record or any other type of material that contains information. Because of your expertise in a certain area or simply because of your physical access to the records, you may be called upon to locate Agency records on a particular subject. Please be mindful of the need to search ALL media under the authority of your office. This includes boxes sent to the NSA archives for storage, information on **WEBWORLD** relating to your organization's mission, e-mails, etc. Of course, one should not overlook the obvious - the storage areas within your office.

~~(FOUO)~~ In addition, you should always remember that the official records you compile, be they paper, electronic, or some other media, may be subject to a future **FOIA** request. Even handwritten notes regarding official matters may be subject to release. If you add marginalia to a document, you'll want to make sure that you or the Agency won't be embarrassed if those side notes/comments are subsequently made public because they don't qualify for protection under one of the **FOIA**'s nine exemptions. Also, if you create a record on an Agency electronic system (e.g., **WEBWORLD**, **ENLIGHTEN**) or import information or data from the Internet and place it in an Agency electronic system, you have created an Agency record which is susceptible to request and review under the **FOIA**.

~~(FOUO)~~ We know that you'll have lots of questions regarding the definition of a record and what constitutes a reasonably calculated search. This article is meant to alert Agency employees to the issue. When you are asked to respond to a FOIA request or when you place information on WEBWORLD or import material from the Internet, keep these things in mind. N5P5 is always ready to help you help the Agency meet its legal obligation. For questions about records and records management, you should call S541, Records Management Services, on 972-2260.

(U) By now, you probably understand why this office posts reminders about creating Agency records. The issues of what's a record, what kind of record is it, is it responsive, do we need to search our holdings, is it OK if these expire after a certain length of time, etc., are complicated. Fortunately for all of us, this Agency has experts in these areas, namely, the people who process Freedom of Information Act requests (N5P5), the Records Management people (S541), and the Office of General Counsel.

(U) The question of whether or not it's OK for ENLIGHTEN postings to expire at all is the same as asking whether or not ENLIGHTEN postings meet the criteria of a federal record. The people responsible for the technical side of ENLIGHTEN are working with the Records Management people to get the answer to this question. If it turns out that ENLIGHTEN postings are not federal records, they can expire automatically at whatever age is determined by the people who handle the ENLIGHTEN software. If, on the other hand, ENLIGHTEN postings are federal records, they will have to be handled in accordance with whichever Records Disposition Schedule applies. Either way, we will keep you posted (no pun intended!).

(U) You may access previously posted Policy On-Line articles about the Freedom of Information Act on WEBWORLD, at: (b) (3)-P.L. 86-36

[Redacted]

(U) [Redacted] S541, and Rona Lerner, N5P5, were extremely helpful in writing this article.

[Redacted] N5P [Redacted]@n.nsa, 963-3083, 6/11/98, 1998 06 11)

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(U) Policy On-Line is intended to provide a forum in which policy issues may be raised and discussed. We will endeavor to answer your questions as quickly as possible. Questions may be posted on ENLIGHTEN to admin.policy, e-mailed to n5online@nsa, submitted by telephone to the Office of Policy on 963-5178 or 688-6964, or submitted in writing to N5P in room 2B8118 (OPS 2B). In addition, you may access the Policy On-Line Home page at:

[Redacted]

(b) (2)
(b) (3)-P.L. 86-36

(U) The Agency's other on-line services may be accessed as follows:

CIO/L1 On-Line -

[Redacted]

ENLIGHTEN's comp.security

(b) (2)
(b) (3)-P.L. 86-36

HR On-Line -

[Redacted]

(FAQ List)

ESS 763; ENLIGHTEN's admin.personnel; hronline@nsa

Intelligence Reporting On-Line (IRPOL) -

[Redacted]

ESS 149; irpol@nsa

Security On-Line

ESS 147; ENLIGHTEN's admin.security; s4online@nsa

~~(FOUO)~~ Policy On-Line is a service of N5P and is edited and coordinated
by [Redacted] N5P, [Redacted]@n.nsa.

(b) (3)-P.L. 86-36

"Tell us how we're doing."

[NO-NEWS]

[Unformatted] [Thread] [Use this URL to get here again]

Subject: Policy On-Line, 7 April 1998 (b) (3) -P.L. 86-36

Date: Tue, 7 Apr 1998 14:32:43 GMT

From: [redacted]@n.ssa [redacted]

Newsgroups: admin.policy

Classification: ~~For Official Use Only~~

POLICY ONLINE (U)

(U) AN UPDATE ON POLICY ISSUES AND ACTIONS PROVIDED BY N5P, THE OFFICE OF POLICY

Non -- Responsive

-- Today's Topic(s) --

1. FOIA and IG Procedures (U)

[redacted]

Subject: FOIA and IG Procedures (U)

(U) The following came in to POL anonymously:

Can you please let me know why it is that when I seek information pertaining to procedures of the NSA Inspector General's Office (IG) I am told that they have such procedures but that I can only obtain them from an official FOIA request? Is this really true? Why is it that an internal NSA document would not be provided to an NSA employee without having to go through the formality of FOIA? It would seem to me, that if we would provide a document to an employee through FOIA anyway, that we would not waste the taxpayers money (all the administrative costs associated with FOIA) in order to get that document? Please advise.....

POLICY ON-LINE ANSWER: (U) Requests for OIG documents or information on OIG's policies should be directed to the OIG at 963-3544(s), or ig@nsa, and will be addressed on a case-by-case basis. However, N5P has responsibility for FOIA and is pleased to discuss some of the general issues involved.

(U) It is important to know that just because a record (in this case, IG procedures) is requested under the FOIA does not mean the record will be released to the requester. The FOIA allows agencies to withhold information from release when the information meets the exemption criteria outlined in the law. So a person (Agency employee or anyone else in the world) is free to request the information, but they will only receive the material they have requested if the material is not protected by FOIA exemption. For an in-depth discussion of the FOIA's exemptions, check out "An Overview of the Freedom of Information Act's Nine Exemptions," at:

Approved for Release by NSA on 07-20-2009, FOIA Case # 57996

(b) (2)
(b) (3)-P.L. 86-36

[Redacted]

(U) Without a careful review of any Agency record, we have no way of knowing whether the record is releasable, or is exempt from release, under the FOIA.

(U) You might be interested in knowing that if you do ask an office for information, and they provide it to you, the information is still the property of the Agency, and you are not free to do with it as you wish. However, if information is released to you under the FOIA, the material is then considered public, and you may take it out of the building and consider it yours to do with as you choose.

[Redacted]

N5P, [Redacted]@n.nsa, 963-3083, 4/7/98, 1998 04 07)

(b) (3)-P.L. 86-36

Subject: Policy on-Line, 25 April 1995

Date: Tue, 25 Apr 1995 13:22:49 GMT

From: [redacted]@n.ssa [redacted]

Newsgroups: admin.policy

Classification: ~~For Official Use Only~~

(b) (3) - P.L. 86-36

POLICY ONLINE (U)

~~(FOUO)~~ AN UPDATE ON POLICY ISSUES AND ACTIONS PROVIDED BY N51, THE OFFICE OF POLICY

Tuesday, April 25, 1995

Non-Responsive

-- Today's Topic(s) --

- 1. The Freedom of Information Act (FOIA) and ENLIGHTEN (U)

[redacted]

Subject: The Freedom of Information Act (FOIA) and ENLIGHTEN (U)

QUESTION: (U) I'm kind of curious about the FOIA issue that pops now and then here in ENLIGHTENLAND. Does the general public have access to *any* unclassified things we say on ENLIGHTEN about a certain topic if they ask for it? How does this process work?

POLICY ON-LINE ANSWER: (U) The FOIA allows the public access to government records to the extent that the information in the records is not protected by one of nine exemptions. We have dealt with this topic several times in Policy On-Line. The bottom line here is that if the information is properly marked as FOUO (in other words, it falls within one of the exemptions) there is just as good a chance that it will not be released as that it will.

(U) The following excerpt from our March 10 posting (the second posting of that day) is included in order to clarify the issue of FOUO information.

(U) To clarify and amplify on the subject-- FOUO information and the Freedom of Information Act (FOIA): NSA as a DoD component is bound by the definition of FOUO which appears in DoD Regulation 5400.7-R (DoD Freedom of Information Act Program). The definition reads:

(U) "Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked 'For Official Use Only' (FOUO) and FOUO is not authorized as an anemic form of classification

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to protect national security interests."

(U) Simply put: If information falls within **FOIA** exemptions 2 through 9, it may be marked FOUO. (Exemption 1 pertains to classified information.) As mentioned in our posting of 2 February, information protected by P.L. 86-36 (e.g., names of NSA employees and organizational designators) may be properly marked FOUO. Such information may be protected under exemption 3 of the **FOIA**. But the **FOIA** protects from disclosure 8 categories of information besides that which is classified. Some types of information which may be properly marked FOUO include pre-decisional deliberations, attorney/client work product, and personal privacy information.

(U) Regulation 5400.7-R goes on to say:

(U) "The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the **FOIA**. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, **FOIA** exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release."

(U) This means that the protection of FOUO information will be determined based on the foreseeable harm caused by the release of the information. Although material may be appropriately marked as FOUO, if its release will not result in harm, it will be released under the **FOIA**.

(U) NSA Regulation 10-9 contains a listing of the **FOIA** exemptions, as well as NSA's procedures for processing **FOIA** requests. If you believe information should carry the FOUO caveat, mark it. Doing so will ensure that others treat the material with some care. Do not be misled, however, into believing it will always be protected if requested under the **FOIA**. That decision is made on a case-by-case basis.

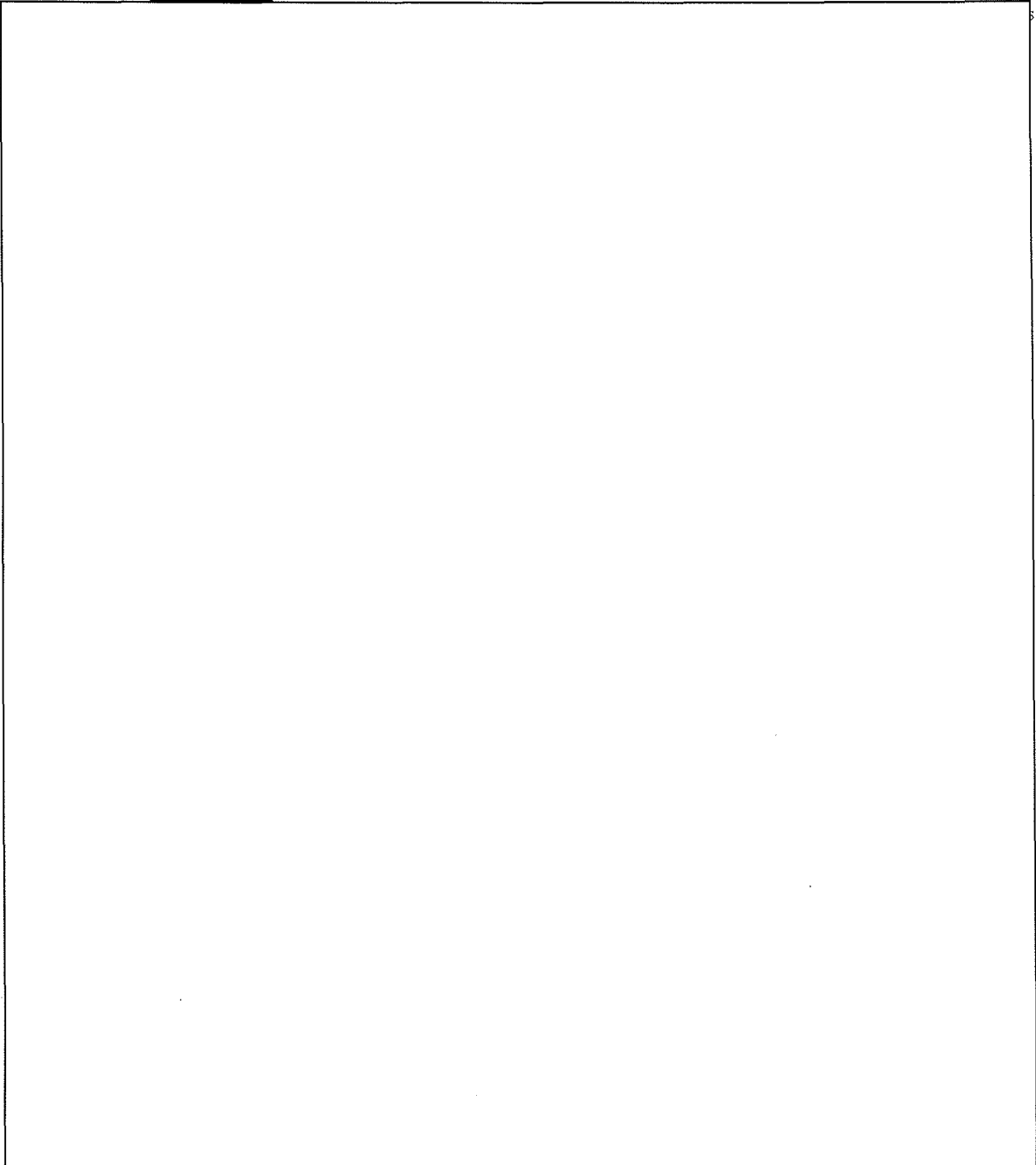
(U) Records may be in any form - paper, electronic, videos, magnetic tapes, etc. As electronic records, ENLIGHTEN postings are subject to the **FOIA**. To date, we have had no requests specifically for ENLIGHTEN postings and none have been gathered in Agency-wide searches for records responsive to **FOIA** requests on any other subject. Agency employees who are involved in searches for their Key Components in response to a tasker from the **FOIA** branch, should consider ENLIGHTEN records as they consider other records in conducting their searches.

(U) Regarding the question about an individual's being notified that one of his/her postings to ENLIGHTEN is being released and his/her having a say in the release, typically the release of such information would not differ from the release of any other record authored by an NSA employee. As with other records, you may be called upon to review the material because of your technical expertise in the subject matter to offer your recommendation regarding the release or denial of the information. Generally, most organizations have not expressed an

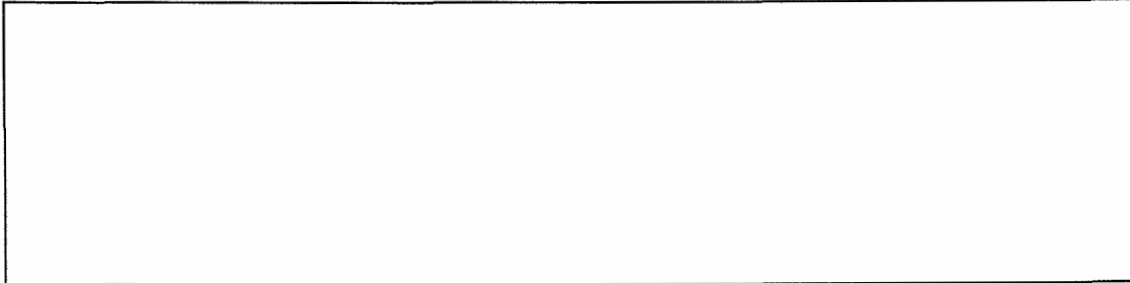
(b) (3) - P.L. 86-36

interest in learning of the final disposition of their records. If someone expresses an interest in the final release determination when sending us the records they've gathered in their search, we keep them apprised. Usually, however, this is done by providing the organization with a copy of our correspondence to the FOIA requester. We do not, as a rule, make an additional copy of the released material for the OPI.

(Rona Lerner, N5131, rllerne@n.nsa, 963-5827, 688-6527 and [redacted]
[redacted] N5132, [redacted]@n.nsa, 963-4582, 688-6798)



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(FOUO) Policy On-Line is intended to provide a forum in which policy issues may be raised and discussed. We will endeavor to answer your questions as quickly as possible. Questions may be posted on ENLIGHTEN to admin.policy, E-Mailed to n5online@nsa, submitted by telephone to the Office of Policy on 963-3083s or 688-6964b [redacted] / 688-6798 or 963-4582s [redacted], or submitted in writing to N51 in room 2B8118 (OPS 2B).

(b) (3)-P.L. 86-36

(FOUO) Policy On-Line is a service of N51 and is edited and coordinated by [redacted] N5132, and [redacted] S/A N51.

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[redacted] and [redacted]
963-4582s 963-3083s
688-6798b 688-6964b
 n5online@nsa
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Policy OPS 2B
OnLine 2B8118

"Tell us how we're doing."

[NO-NEWS]

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(b) (3) - P.L. 86-36

Subject: Policy On-Line, 16 March 1995

Date: Thu, 16 Mar 1995 14:08:12 GMT

From: [redacted]@n.nsa [redacted]

Newsgroups: admin.policy

Classification: ~~For Official Use Only~~

POLICY ONLINE (U)

~~(FOUO)~~ AN UPDATE ON POLICY ISSUES AND ACTIONS PROVIDED
BY N51, THE OFFICE OF POLICY

Thursday March 16, 1995

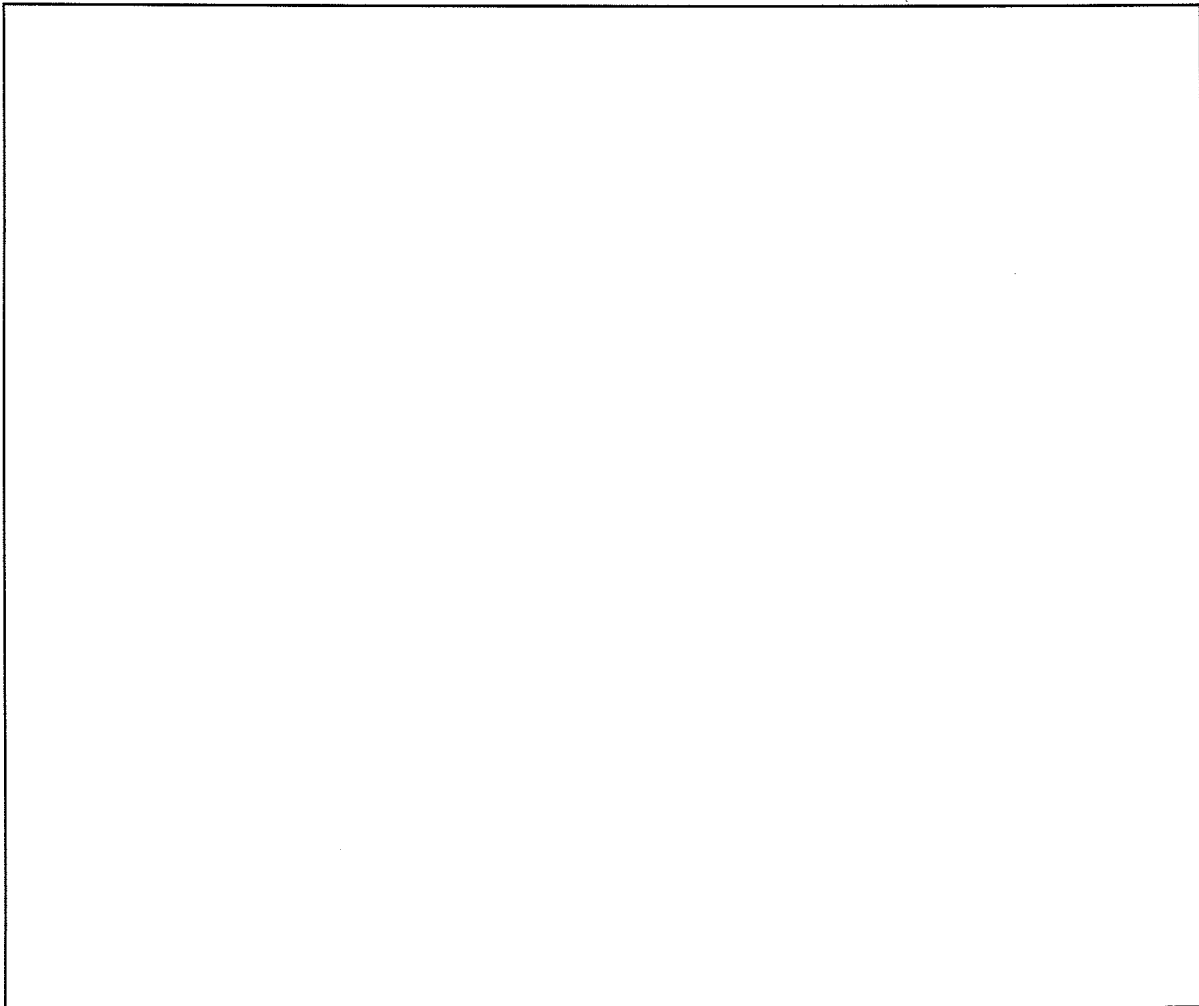
Non - Responsive

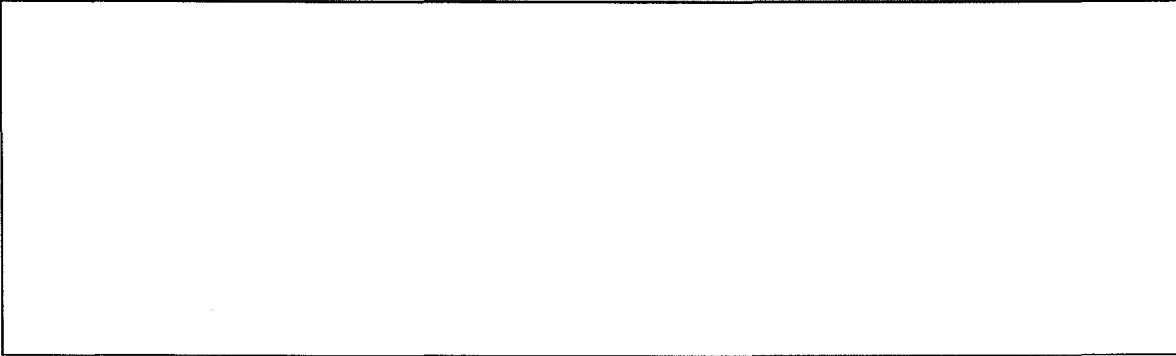
-- Today's Topic(s) --

[redacted]

2. Correction Regarding FOIA Regulation (U)

Non - Responsive





Subject: Correction Regarding FOIA Regulation (U)

(U) In yesterday's edition, I indicated that the regulation on the Freedom of Information Program at NSA "details how the Freedom of Information Act and the Privacy Act, among other things, are implemented here at NSA."

(FOUO) I was wrong - the regulation posted references the Privacy Act, but does not deal with its implementation at NSA. There is an entirely different regulation which outlines the Agency's implementation of the Privacy Act. As that regulation, NSA/CSS Reg 10-35, is very complicated, we will not be posting it on-line. Anyone with Privacy Act concerns should contact N5131 on 963-5827.

[redacted] N5132, [redacted] n.nsa, 963-4583, 688-6798)

(b) (3)-P.L. 86-36

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(FOUO) Policy On-Line is a service of N5P and is edited and coordinated by [redacted] N5132, and [redacted] S/A N5P.

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"Tell us how we're doing."

[NO-NEWS]

[Unformatted] [Thread] [Use this URL to get here again]

Subject: Policy OnLine, 10 March 1995

Date: Fri, 10 Mar 1995 14:50:00 GMT

From: [redacted]@n.nsa [redacted]

Newsgroups: admin.policy

(b) (3)-P.L. 86-36

Classification: ~~FOUO~~

POLICY ONLINE (U)
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~~(FOUO)~~ AN UPDATE ON POLICY ISSUES AND ACTIONS PROVIDED
BY N51, THE OFFICE OF POLICY

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Friday, March 10, 1995

-- Today's Topic -- FOIA and Classification (U)

Subject: FOIA and Classification (U)

Issue (U): The following was posted earlier: "I'm surprised that one of the NSA net.cops hasn't jumped on this one with a Cease & Desist order. The original article was unclassified, and therefore presumably subject to a Freedom Of Information request. . . ."

~~(FOUO)~~ Another person posted this: "Remember, no matter how informal it may seem, what gets posted is on the record. ENLIGHTEN postings are not simply off-the-record chatter. At the present time, we are operating under the assumption that ENLIGHTEN articles would be releasable to the public under a Freedom-Of-Information-Act (FOIA) request. Misuse could potentially result in embarrassment to the Agency. Your articles reflect on your organization and NSA as well as on you. (With regard to FOIA, two things to remember: 1) use proper classifications to ensure that classified material is not accidentally released . . ."

Policy OnLine Comment ~~(FOUO)~~: From our 2 Feb 95 post:
"N5P-FOIA/PA reviews all records gathered and found responsive to a FOIA or Privacy Act request. In this review of both classified and unclassified [[repeat CLASSIFIED and unclassified!!!] records, a determination is made as to whether the material is properly classified and, if classified, is segregable for release. If it is not classified (whether properly marked FOUO or not), the record is reviewed for sensitive information that could be withheld under Public Law 86-36.

"(Gerald Stoudt, N5P-FOIA/PA, gpstoud@n.nsa, 963-5827, 688-6527)"

From our 9 Feb 95 post:

"Regardless of what we are asked for, if the requester has adequately described the records or documents he's seeking, then the FOIA requires the agency to conduct a search.

"(Gerald Stoudt, FOIA/PA Branch, N5131, 963-5827s)"

Consequently, don't be misled into believing that merely by putting a classification on an Agency record that that record then will be automatically exempted from release under the FOIA or Privacy Act. Data neither classified nor marked FOUO can be withheld from release if it

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07-20-2009, FOIA Case # 57996

Subject: Policy OnLine, 9 February 1995 (U)

Date: Thu, 9 Feb 1995 16:04:00 GMT

From: [redacted]@n.nsa [redacted]

Newsgroups: admin.policy

Classification: ~~FOUO~~

POLICY ONLINE (U)

~~(FOUO)~~ AN UPDATE ON POLICY ISSUES AND ACTIONS PROVIDED
BY NSP, THE OFFICE OF POLICY

Thursday, February 9, 1995

-- Today's Topic --

Freedom of Information Act - Not Just Another Day at the Office (U)
~~(FOUO)~~ The Freedom of Information Act branch recently got into the "time-sensitive" realm by ferreting out the facts behind British press reports of 24 January which incorrectly sourced a document on the Pan Am flight #103 bombing to NSA and the Air Force. Portrayed as released information under the Freedom of Information Act (FOIA), the press stories claimed an Air Force SIGINT unit had reported that an Iranian government official paid \$10 million to two terrorist organizations to bomb Pan Am-103 in retaliation for the U.S. shootdown of an Iranian Airbus. The stories created an urgent need for the FOIA branch to sort out fact from fiction, with these facts emerging:

- the information released under the FOIA was not SIGINT
- NSA had received a FOIA request from an attorney for Pan Am in February 1991
- the legally-required search for documents was made, with a collateral report found which was referred, in February 1992, to the Defense Intelligence Agency for review and direct response to the requester
- DIA, in turn, referred the document to the Air Force in August 1993 after determining AF had classification review authority over it
- In November 1994, AF released a redacted version of the document to the attorney, advising him that NSA had located a document and had forwarded it to the Air Force.

N5131 was able to determine the above facts and provide them quickly to the Director and Key Components within hours of becoming aware of the press reports. We were able to do this because our FOIA procedures, records system, and database are all time-tested and healthy.

The Agency also receives numerous FOIA requests about unusual subjects, such as UFO's. One requester wanted us to respond to the following question:

"I would like to know why your agency is hiding the information on UFO's? I have seen four sightings since childhood. I would like to know because you or the president does not have the right to give the aliens permission to experiment with the human race."

In this case, we had to ask the requester for clarification on what he was seeking, since the FOIA applies only to records and does not compel agencies to answer questions posed in FOIA requests. Also, the FOIA does not require agencies to create records.

Here is a further sampling of UFO-related requests submitted to NSA under the FOIA:

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07-20-2009 FOIA Case # 57998

- Unidentified flying object abductions of civilians and/or military personnel
- United States Military Research into "Missing Time"
- 1958 Memos to then President Eisenhower on the subject of UFOs
- Unexplainable lights as recently as October 1991 near area 51 in the Nevada desert
- The S4 military research facility in area 51
- Photographs by Gemini 4 crew of McDivitt and White on July 3, 1964 of a UFO silver cylindrical object that almost collided with Gemini spacecraft
- Blue room, Wright Patterson Air Force Base UFO artifact storage
- The disappearance of Navy flight 19 and the Martin Mariner which disappeared shortly after take-off ordered to search for the missing flight 19 aircraft
- The northeast power blackout of 1965 in which UFO activity was recorded in New York, Newark, Philadelphia, Massachusetts, Rhode Island and New York

Regardless of what we are asked for, if the requester has adequately described the records or documents he's seeking, then the FOIA requires the agency to conduct a search. As you can see from the above examples, FOIA case officers' daily routines are not always "just another day at the office."

(Gerald Stoudt, FOIA/PA Branch, N5131, 963-5827s)

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~~(FOUO)~~ Policy On-Line is a service of N5P and is edited and coordinated by [redacted] N5P (Information Security Policy) and Ed Rockstein, S/A N5P.

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[redacted]	and [redacted]	Policy OPS 2B
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n5online@po		

(b) (3)-P.L. 86-36

"Tell us how we're doing."

[NO-NEWS]

[Unformatted] [Thread] [Use this URL to get here again]

(b) (3)-P.L. 86-36

Subject: Policy On-Line

Date: Thu, 6 Feb 1997 15:18:41 GMT

From: [redacted]@d.nsa>

Newsgroups: admin.announce

Classification: ~~FOUO~~

POC for this posting is n5online@nsa

(U) Approval to release to Agency-wide distro granted by DDP, per Jim Cavanaugh, Chief, N5P.

POLICY ONLINE (U)
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(U) AN UPDATE ON POLICY ISSUES AND ACTIONS PROVIDED BY N5P, THE OFFICE OF POLICY

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Thursday, February 6, 1997

-- Today's Topic(s) --

Non - Responsive

1. FOIA and Agency Records: Your Obligations Under the Law (U)



Subject: FOIA and Agency Records: Your Obligations Under the Law (U)

(U) The Freedom of Information Act (FOIA) requires that an agency provide the public access to its records unless the information is protected by one of nine exemptions. When a requester submits a letter to NSA requesting records pursuant to this law, FOIA/PA Services (N5P5) must conduct a search that is reasonably calculated to locate responsive records. This means that N5P5 must search organizations within the Agency that would most likely have responsive material. You may have already provided support to N5P5 in this important mission or you may be tapped in the future. With the recent passage of the Electronic FOIA (EFOIA), we thought it would be a good time to remind employees of their obligations under the law regarding the search for material responsive to the FOIA. We'd like you to understand what a record is and what is expected of you as the record holder or creator.

~~(FOUO)~~ A record is any material which conveys information. Records may be paper, film, microfiche, an electronic record or any other type of material that contains information. Because of your expertise in a certain area or simply because of your physical access to the records, you may be called upon to locate Agency records on a particular subject. Please be mindful of the need to search ALL media under the authority of your office. This includes boxes sent to the NSA archives for storage, information on WEBWORLD relating to your organization's mission, e-mails, etc. Of course,

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one should not overlook the obvious - the storage areas within your office.

(FOUO) In addition, you should always remember that the official records you compile, be they paper, electronic, or some other media, may be subject to a future FOIA request. Even handwritten notes regarding official matters may be subject to release. If you add marginalia to a document, you'll want to make sure that you or the Agency won't be embarrassed if those side notes/comments are subsequently made public because they don't qualify for protection under one of the FOIA's nine exemptions. Also, if you create a record on an Agency electronic system (e.g., WEBWORLD, ENLIGHTEN) or import information or data from the Internet and place it in an Agency electronic system, you have created an Agency record which is susceptible to request and review under the FOIA.

(FOUO) We know that you'll have lots of questions regarding the definition of a record and what constitutes a reasonably calculated search. This article is meant to alert Agency employees to the issue. When you are asked to respond to a FOIA request or when you place information on WEBWORLD or import material from Internet, keep these things in mind. N5P5 is always ready to help you help the Agency meet its legal obligation. For questions about records and records management, you should call S541, Records Management Services, on 972-2260.

(Rona Lerner, N5P5, rllerne@n.nsa, 963-5827, 2/6/97, 1997 02 06)

Subject: Policy On-Line, Decemeber 1, 1994
Date: Thu, 1 Dec 1994 14:39:06 GMT
From: [redacted]@n.nsa [redacted]
Newsgroups: admin.policy
Classification: ~~For Official Use Only~~

POLICY ONLINE (U)

~~(FOUO)~~ AN UPDATE ON POLICY ISSUES AND ACTIONS PROVIDED
BY N51, THE OFFICE OF POLICY

Thursday, December 1, 1994

-- Today's Topic(s) --

Follow-up on FOIA/PA (U)

QUESTION (U): Is the released information then considered public? If so, would it be possible to make available a list of what NSA information has been released? It would help in individual classification decisions to know that "Fact XXX has now been declassified and released".

POLICY ON-LINE ANSWER: (U) There is no standard answer to this question. Information which we've released to the National Archives and Records Administration, or which has subsequently made it into the Library of Congress, or which has been published or reported by the media is public information. But, for a lot of FOIA requests, the response goes back to individuals who may or may not have the desire or the means of disseminating it to a wide enough audience for it to be considered "public information," although there is nothing preventing them from doing so.

~~(FOUO)~~ N5131 does not maintain a listing of what has been released. We access our database to determine if a particular topic or document has been the subject of a prior request. If so, and the material was released before, it is an easy matter to release it again to the latest requestor.

~~(FOUO)~~ Information that is to be declassified as a result of a FOIA request is coordinated with N5132, the Office of Information Security Policy, which manages the classification and declassification of Agency information. When the FOIA branch determines that a particular release may be of interest to the general public, a copy is made available to the National Cryptologic Museum.

~~(FOUO)~~ In addition, major declassification decisions are sent out to a broad Agency distribution. An example of such a decision involves the fact of SIGINT targeting of North Vietnam from 1960-1975. Prior to its being declassified in February 1993, that fact was Secret-Handle Via COMINT Channels Only.

(U) Because there is much more to declassification than its ties to FOIA,

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we will post a more in-depth article on that topic in the near future.

(Jerry Stoudt, N5131, gpstoud@n.nsa, 963-5827, 688-6527

[redacted] N5132, [redacted]@n.nsa, 963-4582, 688-6798)

(b) (3)-P.L. 86-36

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~~(FOUO)~~ Policy On-Line is intended to provide a forum in which policy issues may be raised and discussed. We will endeavor to answer your questions as quickly as possible. Questions may be posted on ENLIGHTEN to admin.policy, E-Mailed to n5online@po, submitted by telephone to the Office of Policy on 963-3083s or 688-6964b [redacted] / 688-6798 or 963-4582s [redacted], or submitted in writing to N51 in room 2B8118 (OPS 2B).

~~(FOUO)~~ Policy On-Line is a service of N51 and is edited and coordinated by [redacted] N5132, and Ed Rockstein, S/A N51.

+++++

++++++ [redacted] 963-4582s 688-6798b n5online@po ++++++	and	[redacted] 963-3083s 688-6964b ++++++	Policy OPS 2B OnLine 2B8118
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"Tell us how we're doing."

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Subject: Policy On-Line, 30 November 1994

Date: Wed, 30 Nov 1994 14:43:34 GMT

(b) (3) - P.L. 86-36

From: [redacted]@n.nsa [redacted]

Newsgroups: admin.policy

Classification: ~~For Official Use Only~~

POLICY ONLINE (U)
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~~(FOUO)~~ AN UPDATE ON POLICY ISSUES AND ACTIONS PROVIDED
BY N51, THE OFFICE OF POLICY

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Wednesday, November 30, 1994

-- Today's Topic(s) --

Freedom of Information Act - Everyone's Access to Government
Information; Privacy Act - Not Everyone's Access (U)

(U) The Freedom of Information Act (FOIA), enacted in 1966, establishes an effective statutory right of access to government information. The FOIA provides that any person has a right, enforceable in court, of access to federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. Since this right of access is not limited to U.S. citizens, NSA receives, and responds to, requests from foreigners. The law draws no bounds around what a requestor can ask for; it only stipulates that the receiving Agency be able to reasonably ascertain which records are being requested. Once records are found, they must be reviewed to see if they are responsive to the request and to identify any information which may legally be withheld under one of nine exemptions. A classified document would be reviewed to identify any unclassified portions which would be responsive and the release of which would cause no foreseeable harm to the national security. In addition, older records which have gone through a mandatory classification review and which are subsequently declassified, are also releasable. In what may come as a surprise to some, the Agency releases considerable amounts of information in response to FOIA and Privacy Act requests.

(U) The Privacy Act (PA) of 1974, in the broadest of terms, balances the government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from federal agencies' collection, maintenance, use, and disclosure of personal information about them. The law defines an individual as a citizen of the U.S. or an alien lawfully admitted for permanent residence. One of the primary considerations in determining whether to release information under the PA or not is the "no disclosure without consent" rule. This simply means that no agency shall disclose any record to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

~~(FOUO)~~ N5131, the FOIA/PA branch within the Office of Information and Policy, processes approximately 1,000 FOIA and Privacy Act requests

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each year. FOIA and PA case officers are knowledgeable in many areas of the Agency's missions; they regularly make classification decisions as part of their review process. They interact frequently with the Office of General Counsel, discussing legal issues that may affect decisions to withhold/release information. Since each request is somewhat different, case officers are presented with an interesting variety of challenging cases. While N5131 is the OPI for providing all responses to FOIA/PA requests, the job gets done only with the broad support and records-finding assistance of many people and organizations within the Key Components. It's a legal responsibility to respond to FOIA/PA requests, and the Agency is meeting this responsibility every day through the professional, dedicated efforts of a lot of folks.

(Gerald Stoudt, N5131, gpstoud@n.nsa, 963-5827, 688-6527)

(b) (3)-P.L. 86-36

~~(FOUO)~~ Policy On-Line is intended to provide a forum in which policy issues may be raised and discussed. We will endeavor to answer your questions as quickly as possible. Questions may be posted on ENLIGHTEN to admin.policy, E-Mailed to n5online@po, submitted by telephone to the Office of Policy on 963-3083s or 688-6964b [redacted] / 688-6798 or 963-4582s [redacted], or submitted in writing to N51 in room 2B8118 (OPS 2B).

~~(FOUO)~~ Policy On-Line is a service of N51 and is edited and coordinated by [redacted] N5132, and [redacted] S/A N51.

[redacted]	and [redacted]	Policy OPS 2B
963-4582s	963-3083s	OnLine 2B8118
688-6798b	688-6964b	
n5online@po		

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Subject: (U) NSA On-Line, December 16, 1999

Date: Thu, 16 Dec 1999 01:31:06 GMT

From: Automated Agency Mass Mailer E-mail Process <agencyall@nsa>

Newsgroups: admin.announce

Classification: UNCLASSIFIED

(b) (3) - P.L. 86-36

Security Control Marking: ~~FOR OFFICIAL USE ONLY~~

Release Authority: NSA/CSS Internal Communications Cell

POC for Message: [redacted]@nsa

Distribution: Entire NSA Work Force

(U) NSA ON-LINE

Non - Responsive

-- Today's Topics --

[redacted]

2. (U) **FOIA** and FOUO (Office of Policy)

[redacted]

[redacted]

2. Subject: (U) **FOIA** and FOUO (Office of Policy)

QUESTION: (U) Classified WEBWORLD pages must display their declassification exemptions (X1-X8), so why don't FOR OFFICIAL USE ONLY pages display their Freedom of Information Act (**FOIA**) exemptions?

ANSWER: (U) Executive Order 12958 requires the declassification instructions to appear on any classified document. The exemptions X1-X8 are one type of declassification instruction. The DoD (**FOIA**)

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Program does not require us to list the relevant FOIA exemptions when creating an unclassified document which is protected as FOUO. These rules apply to Web pages, as well as any other type of document.

[redacted] N5P52, [redacted] 963-4582, 12/16/99, 1999 12 16)

(b) (3)-P.L. 86-36

Subject: (U) NSA On-Line, June 26, 2000

Date: Mon, 26 Jun 2000 00:05:04 GMT

From: Automated Agency Mass E-Mailer E-mail Process <agencyall@nsa>

Newsgroups: admin.announce

Classification: UNCLASSIFIED

(b) (3) - P.L. 86-36

Security Control Marking: ~~FOR OFFICIAL USE ONLY~~

Release Authority: Corporate Internal Communications (N68)

POC for Message: [redacted]@nsa)

Distribution: Entire NSA Work Force

Non - Responsive

(U) NSA ON-LINE
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-- Today's Topics --

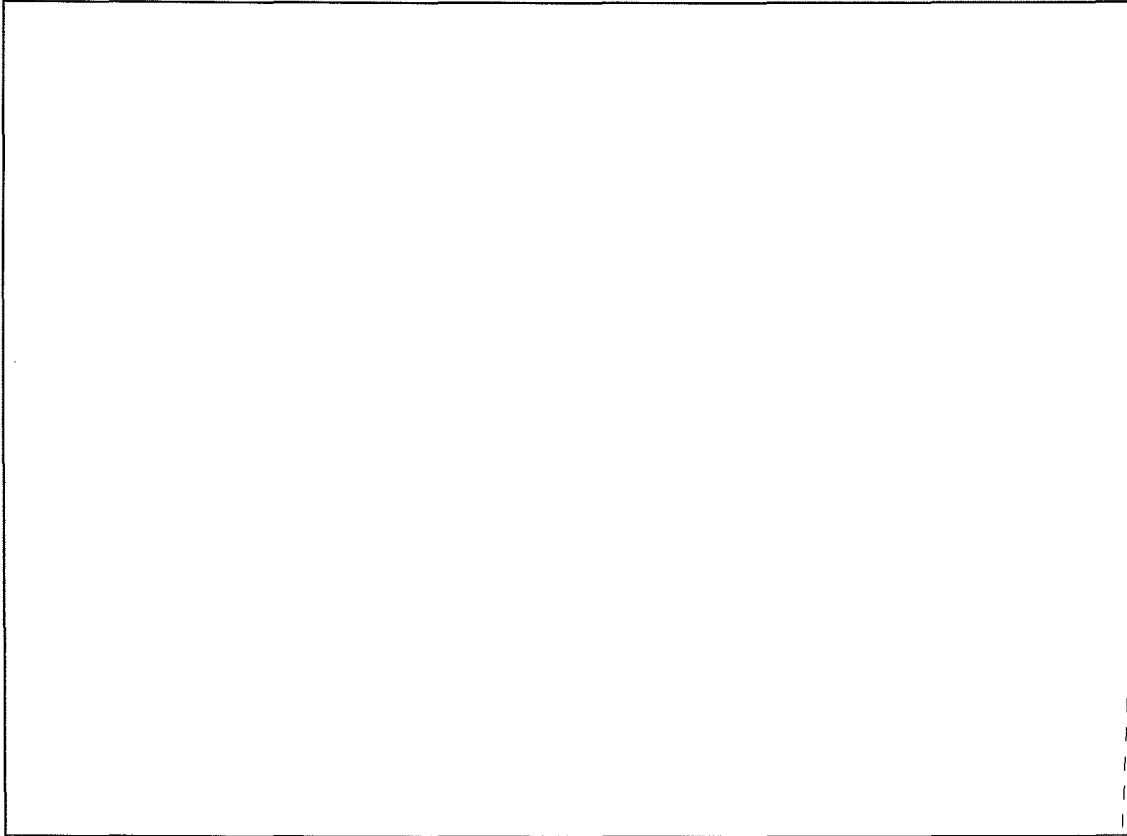
[redacted]

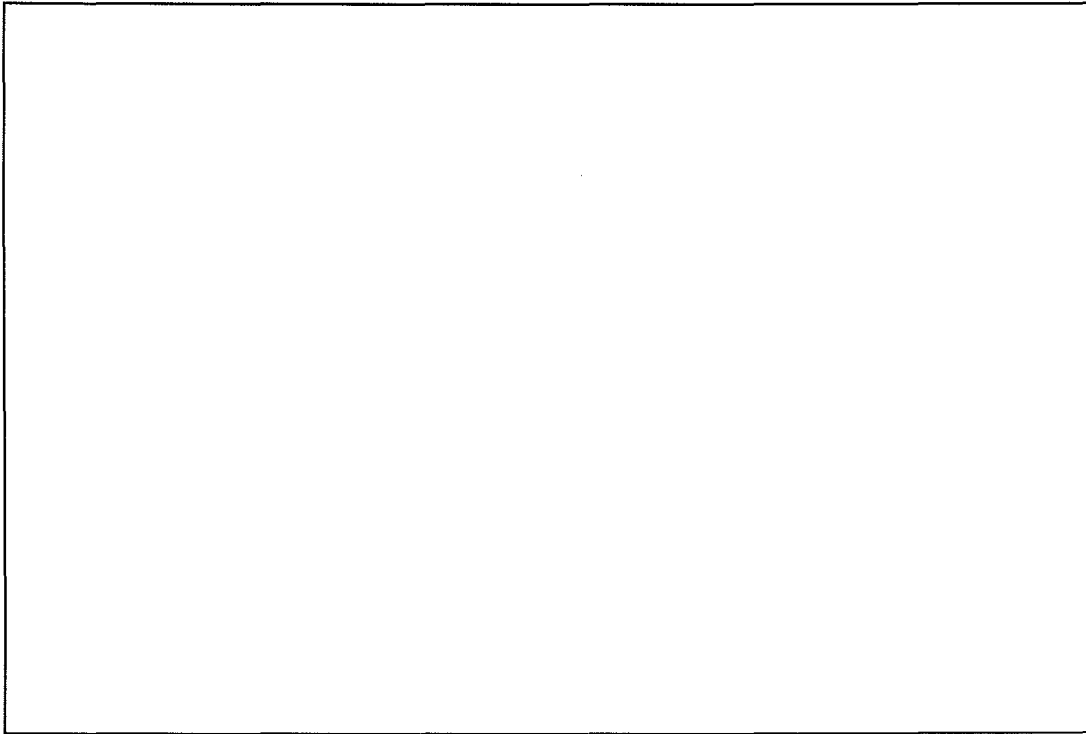
3. (U) FOIA Request (Freedom of Information Act and Privacy Act Services)

[redacted]

[redacted]

Non - Responsive





3. Subject: (U) FOIA Request (Freedom of Information Act and Privacy Act Services)

QUESTION: (U) If, as an NSA employee, you submit a FOIA request to the Agency for your promotion information, will the results of this request include promo-board notes/feedback/reasons for non-selection? If not, is there any other means short of a lawsuit to get access to that information from the Agency? What legal rights, if any, do employees have to this kind of information? Some promo boards are making selections two quarters in advance, but not telling those selected for the next quarter until that quarter arrives. Don't we even have a right to know what our own salary is going to be? If FOIA requests do include promo board comments, about how much would such a request cost?

ANSWER: (U) Any records used as part of this Agency's promotion board process are Agency records, and as such, may be requested pursuant to the Freedom of Information Act (FOIA). The request must be in writing, clearly identify the records sought, and include the requester's name and organization. The Office of Policy oversees NSA's FOIA program, and all such requests should be sent to NSP51, 2B8106. Agency personnel are reminded that FOIA requests are processed in order of receipt, documents receive a line-by-line review, and exempt information is deleted prior to release (e.g., information relating to other employees may be withheld under the personal privacy exemption of the FOIA and names of NSA/CSS employees pursuant to Public Law. 86-36). Regarding your question on costs, the FOIA authorizes agencies to charge for search, review, and duplication of responsive records based on specific criteria. In the case of an employee requesting such records for his/her own use, the employee would be charged \$25.00 per hour for search over two hours and \$.15 per page for duplication over 100 pages. Costs associated with a request cannot be determined until all responsive documents are received by NSP51.

(U) Employees also need to be aware that if the intent of the request is to gain insight into the reasons why the employee has not been promoted, employees need not resort to the FOIA to obtain such information. The Office of Policy and the Office of Human Resources Policy believe the employee's interest would be better served if the narrative information is obtained through the individual's management chain. This would provide the employee with a better understanding of what is required for promotion and alleviate any confusion generated by the numerical ratings on the scoresheets.

(U) Please note that this response was coordinated with S245/HR Policy.

(Pamela N. Phillips, Freedom of Information Act and Privacy Act Services, NSP51, pnphill, 963-5827, 06/26/00, 2000 06 26)

Subject: Re: Snow

Date: Wed, 7 Dec 2005 18:54:55 GMT

From: [redacted]@nsa

(b) (3)-P.L. 86-36

Newsgroups: misc.misc

References: 1, 2

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

Perhaps the following excerpt from NSA/CSS Manual 123-2 will lead to a better understanding of exactly what FOUO means.

(U) "FOR OFFICIAL USE ONLY" -

Unclassified information that falls under one or more FOIA exemption may, in accordance with DoD Regulation 5400.7-R (DoD Freedom of Information Act Program), be marked as FOR OFFICIAL USE ONLY. NSA, as a DoD component, is bound by the definition of FOUO which appears in DoD Regulation 5400.7-R . The definition reads:

"Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked 'For Official Use Only' (FOUO) and FOUO is not authorized as an anemic form of classification to protect national security interests."

(U) As was stated in Chapter VII, if information falls within FOIA exemptions 2 through 9, it may be marked FOUO. (Exemption 1 pertains to classified information.) You can find the list of FOIA exemptions in NSA/CSS Regulation 10-9, NSA/CSS Freedom of Information Act Program.

[redacted] (Contractor - NSA Retiree)
Project DRILLMASTER (K922)
Frontier Technologies Inc
Bldg HQS
Room 5A179 Suite 6144
963-3353s/301-688-7885b

(b) (3)-P.L. 86-36

(b) (3)-P.L. 86-36

[redacted] wrote:

> ~~Classification: UNCLASSIFIED//FOR OFFICIAL USE ONLY~~

>

>

> In article [redacted]

(b) (2)

(b) (3)-P.L. 86-36

> Anne Hill <ahill@nsa> writes:

>

>>~~Classification: UNCLASSIFIED//FOR OFFICIAL USE ONLY~~

>>

>>In a list or stand alone, the majority of Agency employee names are FOUO

>>unless you have a public job and represent the agency to the public.

>

>

> Right!

>

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- > So by your argument (that you can't share FOUO info with your family)
- > the majority of Agency employees can't tell their families where they work.
- >
- > FOUO just doesn't mean that. It means the govt can't be forced to release
- > the info to the public.

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Subject: Policy OnLine Special Addendum: FOIA

Date: Fri, 10 Mar 1995 18:37:00 GMT

From: [redacted]@n.nsa [redacted]

Newsgroups: admin.policy

(b) (3)-P.L. 86-36

~~CLASSIFICATION: FOUO~~

POLICY ONLINE ADDENDUM (U)

~~(FOUO)~~ AN UPDATE ON POLICY ISSUES AND ACTIONS PROVIDED
BY NS1, THE OFFICE OF POLICY

Thursday, March 9, 1995

-- Special Addendum --

Subject: More on **FOIA** and Classification ~~(FOUO)~~

(U) To clarify and amplify on the subject-- FOUO information and the Freedom of Information Act (**FOIA**): NSA as a DoD component is bound by the definition of FOUO which appears in DoD Regulation 5400.7-R (DoD Freedom of Information Act Program). The definition reads:

"Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in **FOIA** exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked 'For Official Use Only' (FOUO) and FOUO is not authorized as an anemic form of classification to protect national security interests."

(U) Simply put: If information falls within **FOIA** exemptions 2 through 8, it may be marked FOUO. (Exemption 1 pertains to classified information.) As mentioned in our posting of 2 February, information protected by P.L. 86-36 (e.g., names of NSA employees and organizational designators) may be properly marked FOUO. Such information may be protected under exemption 3 of the **FOIA**. But the **FOIA** protects from disclosure 8 categories of information besides that which is classified. Some types of information which may be properly marked FOUO include pre-decisional deliberations, attorney/client work product, and personal privacy information.

(U) Regulation 5400.7-R goes on to say:

"The prior application of FOUO markings is not a conclusive

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basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release."

(U) This means that the protection of FOUO information will be determined based on the foreseeable harm caused by the release of the information. Although material may be appropriately marked as FOUO, if its release will not result in harm, it will be released under the FOIA.

(U) NSA Regulation 10-9 contains a listing of the FOIA exemptions, as well as NSA's procedures for processing FOIA requests. If you believe information should carry the FOUO caveat, mark it. Doing so will ensure that others treat the material with some care. Do not be misled, however, into believing it will always be protected if requested under the FOIA. That decision is made on a case-by-case basis.

(Rona Lerner, N5P-FOIA/PA, rllerne@n.nsa, 963-5827, 688-6527)

(U) I hope that this will help to clarify my explanation posted earlier today. While I'm clarifying, permit me to clear up one more concept, inelegantly (i.e., not entirely correctly) stated today. A record may be properly classified, but portions of sentences, portions of paragraphs, indeed many portions may be "segregable" as unclassified, and, therefore, releasable. The properly classified information portion of the data will remain protected as long as its classification remains valid.

[redacted] S/A N51, [redacted]@nsa, 963-3083s)

(FOUO) Policy On-Line is intended to provide a forum in which policy issues may be raised and discussed. We will endeavor to answer your questions as quickly as possible. Questions may be posted on ENLIGHTEN to admin.policy, E-Mailed to n5online@po, submitted by telephone to the Office of Policy on 963-3083s or 688-6964b [redacted] / 688-6798 or 963-4582s [redacted] or submitted in writing to N51 in room 2B8118 (OPS 2B).

(FOUO) Policy On-Line is a service of N5P and is edited and coordinated by [redacted] N5132, and [redacted] S/A N51.

(b) (3)-P.L. 86-36

[redacted] and [redacted]
963-4582s 963-3083s

Policy OPS 2B
OnLine 2B8118

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| 688-6798b          688-6964b |  
|          n5online@po          |  
+*****+
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"Tell us how we're doing."

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Subject: The Power of FOIA**Date: Fri, 22 Jun 2001 16:16:34 GMT****From:** [redacted] <[redacted]@nsa.>**Newsgroups:** [admin.talk-dirnsa](#), [admin.misc](#)

(b) (3)-P.L. 86-36

CLASSIFICATION: ~~CONFIDENTIAL~~

Have you ever felt you were burnt by the promotion process but lacked information as to why and how it happened? I have found a partial solution to this problem and would like to share it with everyone.

In June of 2000 I filed a Freedom of Information Act (FOIA) request to NSA for all my promotion board records. It took 9 months to get a report from NSA's FOIA office. At this point the FOIA office had tried to thwart my request by ignoring my instructions and confining their search to the records in my current/new organization (which at the time was not yet allowed to consider me for promotion), thus claiming to have found nothing (or at least very little) of interest.

Fortunately, I was given the option to appeal, which I did, and in June of 2001 I received a full and proper response. In my opinion, this report, though limited by various laws and regulations, was definitely worth the wait and trouble.

The report omitted certain types of information, including promo-board deliberations and comments, names of promo board members, voting tallies of each member, and promotion scoresheets from EPA's and persums. All names except my own were blacked out, as well as all bits of classified information.

The information provided included official promo-board records and rankings dating as far back as 1997 (I'm told the boards only keep records for 3 years), demographic data, promotion write-ups submitted by my division board, and emails between promo-board officials and members of my management chain.

At first glance this data appears jumbled, uncoordinated, and mostly blacked out - but to the analytic mind it can be quickly sorted into a wealth of information. Below is a summary of this information according to its source.

From the official promotion board records I was able to determine:

- When my branch had submitted me for promotion and when it had not
- How many other people in my grade my branch had also submitted and when
- When my division-level board had submitted me to the office-level board and when it had not
- My specific ranking on both the division-level board and office-level board for each promotion quarter back to 1997

This information allowed me to compare what my branch was telling me regarding my proximity to promotion with my actual rankings on the boards (these rankings were never disclosed to me) at the time. Also, personal memory and official records of promo-board members and promotion lists posted on webworld allowed me to reconstruct many of the blacked-out names.

From the official promotion board demographic data provided on both those selected and on some who fell just below the cut I was able to determine the following for my specific organization:

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- The COSC of each selectee for promotion
- The Tech-Track status of each selectee
- How many selectees were team chiefs
- The race/gender of each selectee
- All of the above for some candidates who were close but not selected

This information revealed my particular organization's preference for Intelligence Analysts over linguists, language analysts, and multilinguist-reporters (like myself). It also revealed that my particular organization had a lot more women at my grade than men.

From the emails generated within my management chain in 1999 I found of particular interest:

- Specific feedback as to the reasons for my non-selection by the office-level board, provided to my division chief upon his request (my branch never shared this feedback with ME).
- My division chief's opinion, as expressed to the office chief, that my consistent non-selection for promotion may be grounds for an EEO complaint for violation of the "Equal Pay for Equal Work" principle (again, this was totally new to me)

Also of general interest in my division chief's 1999 emails to my office chief was the following:

- My division chief's fears that my consistent non-selection for promotion was about to drive me out of the division (this actually happened)
- My division chief's concerns about the effect of my departure on the division's ability to fulfill its mission
- My division chief's dismay over my intent to simply leave the division without making threats or entering into bargaining or negotiations over my promotion status
- My division chief's displeasure with the office-level board's discarding of the division-level board's promotion selections
- My division chief's assesment of the morale crisis within my branch and how the office-level board's interference was undermining their ability to retain multi-linguist-reporters working in Low-Density-Languages like myself.

In sum, I would recommend the FOIA to everyone. I was not charged any expenses and the information, while late and incomplete, was far greater than any

I could have hoped to cajole out of NSA managers. Had I still been in that long-defunct division, (and not been recently promoted by my current organization), I would have been able to use this information in concrete ways to make myself more competitive to the promo boards in that specific office. Specifically, I would have abandoned language work and become an Intelligence Analyst, as this is what long-term analysis of that office-level board's selections indicated it preferred.

Information is power, and my personal experience is that the FOIA is a much better source of that information than NSA managers, who are still "strongly encouraged" to provide whatever promotion feedback they like "at their own discretion." Be advised that the Law takes a much different view of your right to this information. All it takes is patience and persistence, and there's nothing to lose.

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