



Homeland Security

Privacy Office, Mail Stop 0655

December 8, 2010

DHS FOIA Office Procedures and Standards for Effectively Implementing Section (a)(2)(D) of the FOIA *"Frequently Requested Documents" Procedures*

On August 26, 2009, the DHS Chief FOIA Officer issued a Memorandum instructing DHS Component FOIA officers to engage in proactive disclosure for a series of documents that may be in the public interest, including frequently requested documents.¹ This related memorandum outlines the process for determining when and how to disclose such frequently requested documents.

Section (a)(2)(D) of the Freedom of Information Act, as amended, instructs agencies to make publicly available records that "have become or are likely to become the subject of subsequent requests for substantially the same records."

- a. "Under this provision, when records are disclosed in response to a FOIA request, an agency is required to determine whether they have been the subject of multiple FOIA requests [...] or, in the agency's best judgment based upon the nature of the records and types of requests regularly received, are likely to be the subject of multiple requests in the future." Guide to the Freedom of Information Act, 2009 Edition at 17 (Department of Justice)
- b. The language in the statute is phrased in the plural; therefore, the Department of Justice Office of Information Policy established the "rule" of three requests which triggers the posting obligation. FOIA Post, "'Frequently Requested' Records."²

Procedures

1. At DHS FOIA, each new case is input by the FOIA Administrative Assistant into the DHS FOIA Tracking System upon receipt.
 - a. Each new request is assigned one or more key words by the Associate Director for Operations upon receipt.
2. When logging each new case, the FOIA Administrative Assistant will search the Tracking System with relevant key words to determine whether there have been requests for substantially the same records. This "key words" provision should be interpreted such that the FOIA Administrative Assistant conducts a search using terms broad enough to yield results (to the extent they may exist) and review matching search results to verify

¹ http://www.dhs.gov/xlibrary/assets/foia/foia_proactive_disclosure.pdf, Internet, Accessed November 16, 2010

² <http://www.justice.gov/oip/foiapost/2003foiapost28.htm>, Internet, Accessed November 16, 2010

results that turn up substantially the same responsive records actually trigger the Department's (a)(2)(D) obligation.

- a. NOTE: sequential requests such as "all FEMA grants for 2009" and "all FEMA grants for 2010" would likely not be examples of requests for substantially the same records under (a)(2)(D), but may be released under other provisions of the DHS proactive disclosure and the Open Government approaches.
3. When the FOIA Administrative Assistant identifies three or more requests submitted during a three-year time frame for substantially the same records (based on similar search results), the FOIA Administrative Assistant will notify the Associate Director for Operations.
 - a. The Associate Director for Operations reviews the requests to determine if the requests meet the (a)(2)(D) standard for substantially similar records; if so, s/he will authorize in writing that the responsive records be posted on the DHS FOIA website and notify the Deputy Chief FOIA Officer and Chief FOIA Officer of the determination;
 - b. The responsive documents will be processed for public posting, consistent with Section 508 of the ADA;
 - c. The Chief FOIA Officer and/or the Deputy Chief FOIA Officer may, in limited circumstances, determine that documents or portions of documents should not be published in order to avoid violating the disclosure prohibitions of the Privacy Act, Trade Secrets Act, or other statutory preclusion. If such a determination is made, the official will provide the decision and rationale in writing to the Associate Director for Operations.
4. Even if DHS FOIA has not yet received three or more requests for substantially the same records, the Assistant Director for Operations may recommend to the Chief FOIA Officer or, in his or her absence, the Deputy Chief FOIA Officer, to proactively disclose certain types of records pursuant to (a)(2)(D) and the August 26, 2009 DHS Proactive Disclosure Memorandum.
 - a. Such recommendations will be written, with a brief explanation of the public interest in the records;
 - b. The Chief FOIA Officer or, in his or her absence, the Deputy Chief FOIA Officer will concur or dissent from the recommendation in writing.
5. DHS FOIA will disclose the number of (a)(2)(D) disclosures that were made in its Chief FOIA Officer's Report narrative, starting in CY 2011.
6. Pursuant to (a)(2)(E), DHS FOIA will post and maintain a general index of the records referred to under subparagraph (a)(2)(D).



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