



Homeland
Security

October 15, 2012

MEMORANDUM FOR: Department Distribution
Department Leadership and DHS FOIA Officers

FROM: Jonathan R. Cantor 
Acting Chief FOIA Officer

SUBJECT: Proper Use of "Still-Interested" Letters in Compliance with Guidance
from the Department of Justice, Office of Information Policy

I am issuing this memorandum to direct component FOIA units to adhere to the Department of Justice, Office of Information Policy (OIP) guidance on the proper use of "still-interested" letters. I call your attention to the following paragraph from the OIP Guidance dated March 4, 2010:¹

Limiting "Still-Interested" Letters or Phone Calls

On occasion, when the passage of time or a change in circumstance gives rise to a question of whether a FOIA requester is still interested in obtaining the requested records, many agencies contact the requester to inquire whether he or she is still interested in having the request processed. When done judiciously, this is entirely appropriate because agency resources should not be expended on processing a request when the requester is no longer interested in the records. At the same time, agencies should be mindful that FOIA requesters can misinterpret the intent behind a letter or phone call inquiring whether the requester remains interested in the request. So this is yet another area where it is important to be mindful of the manner in which such inquiries are made. In particular, absent good cause, an agency should not inquire more than once whether a requester is still interested in the request. Agencies should also afford requesters a reasonable amount of time to indicate their continued interest and should ensure that there is a simple way for requesters to do so.

The OIP guidance is very specific that "still-interested" letters should be used "judiciously" and in limited circumstances. Routine use is inconsistent with the OIP guidance and with the 2009 FOIA memoranda issued by the President² and Attorney General.³ I remind every employee of the Department's commitment to the Administration's policy on transparency and Open Government.

Thank you for your continued support of the presumption of openness in FOIA. Please direct any questions to Delores Barber, Deputy Chief FOIA Officer, at (202) 343-1743.

¹ U.S. Department of Justice, Office of Information Policy, FOIA Post, "OIP Guidance: The Importance of Good Communication with FOIA Requesters," March 4, 2010, <http://www.justice.gov/oip/foiapost/2010foiapost5.htm>.

² President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies, Freedom of Information Act (January 21, 2009), http://www.whitehouse.gov/the_press_office/FreedomofInformationAct.

³ Attorney General Eric Holder, Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (March 19, 2009), <http://www.justice.gov/ag/foia-memo-march2009.pdf>.