



Homeland  
Security

March 11, 2014

MEMORANDUM FOR: FOIA Officers

FROM: Karen Neuman   
Chief Freedom of Information Act Officer

SUBJECT: *Freedom of Information Act* and 2014 Sunshine Week

Each year, we designate a week in mid-March as “Sunshine Week,” during which we emphasize the importance of openness and transparency in the Federal Government. The beginning of Sunshine Week is March 16, the birthday of President James Madison, the author of our Bill of Rights, and the date of National Freedom of Information Day. This year’s Sunshine Week runs from March 16 to March 22 and is dedicated to open government, with events surrounding the Freedom of Information Act (FOIA) and government transparency. As the Department that receives the most FOIA requests in the Federal Government, we must lead by example in responsiveness, openness, and timeliness.

I would like to thank all of you for your excellent contributions over the past year and your tireless efforts in furthering the Department’s openness and transparency initiatives, which are detailed in the *2014 Chief FOIA Officer Report*.<sup>1</sup> At DHS, we use FOIA to implement the Obama Administration’s policy of openness, transparency, and collaboration. We are committed to the letter and the spirit of the law, and strive to fulfill our responsibility to the public in a timely and professional manner. As we celebrate Sunshine Week, we call upon the FOIA Officers to encourage all staff to be aware of Attorney General Holder’s call to action in his FOIA guidelines, issued March 19, 2009,<sup>2</sup> reminding us that “FOIA is everyone’s responsibility.”

#### Implementing GAO Recommendations to Further Openness and Transparency

This memorandum serves as a call to action and also highlights some of our accomplishments over the past year. In honor of Sunshine Week, we seek your renewed commitment regarding continued implementation of the Government Accountability Office’s (GAO) recommendations 2 and 3 contained in its report, GAO-12-828, “*FREEDOM OF INFORMATION ACT*:

<sup>1</sup> The report will be available in late March 2014 at <http://www.dhs.gov/foia-library-frequently-requested-records#2>.

<sup>2</sup> The Attorney General’s Memorandum of March 19, 2009, is available at <http://www.usdoj.gov/ag/foia-memo-march2009.pdf>.

*Additional Actions Can Strengthen Agencies' Efforts to Improve Management.*<sup>3</sup> The Department has made great strides in implementing Recommendation 2, which is “To improve the management of FOIA processing, the Secretaries of DHS, DOD, and HHS and the Attorney General should direct their respective Chief FOIA Officers to ensure that the agency components within their departments, as appropriate, conduct training, perform foreseeable harm analyses, complete reviews, comply with the Milner decision, and distribute guidance to reduce their use of exemptions.”

Regarding reducing the use of exemptions and foreseeable harm analyses, the DHS Privacy Office reaffirmed the Department’s commitment to openness and transparency by issuing a new policy memorandum in June 2013, titled “*Updated Policy for DHS Application of FOIA Exemption 6 to DHS Personnel Information Contained within Agency Records.*”<sup>4</sup> The memorandum provides updated guidance to ensure the Department processes personnel information contained within agency records in a consistent manner.

Additionally, the memorandum asserts that federal employees generally have no expectation of privacy regarding their names, titles, grades, salaries, bonuses, position descriptions, and duty stations, and as such, this information is generally releasable under the FOIA. The memorandum provides three common situations, however, in which the Department is likely to withhold the personally identifiable information (PII) of certain DHS personnel on a case-by-case basis. As the 2014 Chief FOIA Officer Report reflects the Components are all conducting annual training covering a wide variety of topics. We encourage you to continue conducting annual training and finding ways to reduce the use of exemptions, if possible.

Sunshine Week is the perfect time to implement Recommendation 3, which is “To improve the management of FOIA processing, the Secretaries of DHS, DOD, and HHS and the Attorney General should direct their respective Chief FOIA Officers to ensure that the agency components within their departments address the deficiencies in their FOIA libraries by making required categories of records easier to locate, clearly indicating when records in required categories do not exist, and expanding the content of FOIA libraries.” We are pleased with the great strides the Department made in expanding the content of the libraries.

### Proactive Disclosures

From March 2013 through January 2014, DHS proactively posted 16,873 pages, as reported by Components in the DHS FOIA Monthly Reports. DHS has proactively posted 63,858 pages since October 2010, which is when the Department began tracking this information via these reports.

A vast array of information is posted on DHS websites, including material previously available only through a formal FOIA request, such as: historical documents; daily schedules of senior

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<sup>3</sup> This report is available at <http://www.gao.gov/assets/600/593169.pdf>.

<sup>4</sup> This guidance is available at [http://www.dhs.gov/sites/default/files/publications/priv\\_acfoiao\\_memo\\_application\\_of\\_foia\\_exemption\\_b6\\_dhs\\_personnel\\_info\\_contained\\_within\\_agency\\_records\\_20130605.pdf](http://www.dhs.gov/sites/default/files/publications/priv_acfoiao_memo_application_of_foia_exemption_b6_dhs_personnel_info_contained_within_agency_records_20130605.pdf) 3.PDF.

leaders; management directives; contracts; memoranda related to FOIA operations; and procurement records that include awards, orders, solicitations, and purchase cardholder lists.

In addition to proactively posting records, we ask that you take a critical look at your FOIA libraries, make required categories of records easier to locate, clearly indicating when records in required categories do not exist, and expand the content of your FOIA libraries. We realize that the management of the libraries is often not under the FOIA Officers' purview, but we strongly encourage you to assess your libraries and influence the content, if possible.

Regarding expanding the content of FOIA libraries, please continue to follow the guidance set forth in a policy memorandum in December 2010, titled *DHS FOIA Office Procedures and Standards for Effectively Implementing Section (a)(2)(D) of the FOIA "Frequently Requested Documents" Procedures*.<sup>5</sup> This memorandum outlines the process for determining when and how to disclose frequently requested documents. Additionally, the DHS Privacy Office implemented key words in the commercial off-the-shelf (COTS) web application solution to help identify frequently requested records for posting to the FOIA library, and suggest you consider adopting this as a best practice.

The DHS Privacy Office worked with senior leadership at the Department to inform them of proactive disclosures. On March 12, 2013, the Assistant Secretary for the Office of Legislative Affairs (OLA) provided a letter to members of Congress informing them of the Department's initiative to post congressional correspondence logs quarterly in the DHS FOIA Library beginning April 2013.<sup>6</sup> On April 18, 2013, the DHS Privacy Office directed FOIA Officers to begin posting congressional correspondence logs on their websites beginning July 2013, and continuing on a quarterly basis thereafter. We applaud you for your compliance with this initiative and are pleased with the Department's proactive postings.

### FOIA Engagements

We would like this year to be a banner year and note the prominent role FOIA plays in our society as a whole, and at the Department. In December 2013, the DHS Privacy Office and several Components met with GAO for an entrance conference regarding GAO Engagement 311506, Review of DHS Management of FOIA Request Processing. In particular, GAO is interested in the role of the DHS Privacy Office in planning, setting policy, and overseeing DHS Components' FOIA processing. The GAO final report is expected this summer.

DHS is poised to respond to any GAO recommendations from this engagement to improve overall FOIA operations. In the next month, the DHS Privacy Office will meet with the Director, and Deputy Director, Office of Government Information Services (OGIS) regarding OGIS's planned review of DHS's FOIA policies, procedures, and compliance. We welcome these opportunities to improve our FOIA operations and institute best practices across the Department and value your collaborative role in these engagements.

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<sup>5</sup> This guidance is available at <http://www.dhs.gov/xlibrary/assets/foia/cfoiao-memo-dhs-priv-foia-a2d-procedures-20101208.pdf>.

<sup>6</sup> This guidance is available at <https://edit.dhs.gov/sites/default/files/publications/foia/ola-signed-letter-to-congress-congressional-correspondence-logs-3-12-2013.pdf>.

## Transparency and Collaboration

On January 8, 2014, we updated “Department of Homeland Security/ALL – 001 Freedom of Information Act and Privacy Act Records System of Records” (1) to reflect a change in the location of records to include the use of electronic FOIA tracking systems by DHS and its Components; (2) to provide additional routine uses to permit additional sharing; and (3) to update categories of records to include responses to requests. DHS added Routine use L which permits DHS to share the information as follows: “To National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. § 552(h), to review administrative agency policies, procedures, and compliance with the FOIA, and to facilitate OGIS’s offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.”<sup>7</sup>

As we approach Sunshine Week, we encourage you to take pride in the successes over the past year and find ways to be even more transparent as we work to meet the needs of an informed citizenry.

Please direct questions to Delores J. Barber, Deputy Chief FOIA Officer, at [delores.barber@hq.dhs.gov](mailto:delores.barber@hq.dhs.gov) or (202) 343-1743.

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<sup>7</sup> Department of Homeland Security/ALL – 001 Freedom of Information Act and Privacy Act Records System of Records is available at <http://www.dhs.gov/system-records-notices-sorns>.