



Homeland Security

March 4, 2008

MEMORANDUM FOR: All Department of Homeland Security FOIA Officers and Counselors

FROM: HUGO TEUFEL III 
Chief Freedom of Information Act Officer

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Associate General Counsel for General Law

SUBJECT: DHS Treatment of DHS Personnel Information Contained within Agency Records Processed Pursuant to the FOIA

This memorandum details how personnel information contained within agency records should be processed Department-wide under the Freedom of Information Act, 5 U.S.C. § 552.

The Omnibus Appropriation Act for FY 2008, Public Law 110-161, contains government-wide general provisions relevant to the agency Freedom of Information Act (FOIA) programs. The two general provisions, §§721 and 722, limit the dissemination of certain personnel information. The provisions state:

Section 721. None of the funds appropriated by this or any other Act may be used by the agency to provide a Federal employee's home address to any labor organization except when the employee has authorized such disclosure or when such disclosure has been ordered by a court of competent jurisdiction.

Section 722. None of the funds made available in this Act or any other Act may be used to provide any non-public information such as mailing or telephone lists to any person or any organization outside of the Federal Government without the approval of the Committees on Appropriations.

Additionally, it is Department policy to evaluate the release of personally identifying information on employees and individual DHS employees' names on a case-by-case basis. Each such evaluation must consider the factors set forth in *Reporters' Committee, Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 775 (1989), which held that "information that does not directly reveal the operation or activities of the federal government falls outside the ambit of the public interest that the FOIA was enacted to serve." In many cases information that identifies individual DHS

employees falls into this category of information, and FOIA officers should withhold it. Additional support for withholding information that personally identifies individual employees is found in the D.C. Circuit's opinion in *Electronic Privacy Information Center v. Department of Homeland Security et al.*, Civ. No. 04-0944 (D.D.C. 2004 RMU):

"The privacy interest of civilian federal employees includes the right to control information related to themselves and to avoid disclosures that could conceivably subject them to annoyance or harassment in either their official or private lives. Lesar v. Dep't of Justice, 636 F.2d 472, 487 (D.C. Cir. 1980); see also Nix v. United States, 572 F.2d 998, 1006 n.8 (4th Cir. 1978) (noting that, to implicate a federal employee's privacy interest under FOIA, harassment does not have to rise to the level that life or physical safety is in danger). The fact that federal employees have an identifiable privacy interest in avoiding disclosures of information that could lead to annoyance or harassment, however, does not authorize a blanket exemption for the names of all government employees in all records. Baez v. Dep't of Justice, 647 F.2d 1328, 1338 (D.C. Cir. 1980); Lesar, 636 F.2d at 487. To justify their Exemption 6 withholdings, the defendants must show that the threat to employees' privacy is real rather than speculative." (emphasis added)

Even though it is not possible or practicable to establish a basis for withholding the names of all DHS employees in all instances, it is Department policy to evaluate the release of personally identifying information on a case-by-case basis. In determining whether to withhold the information under Exemption 6, consideration shall focus on whether a release can reasonably be expected to cause a threat to the employee's privacy and whether the release of the employee's name(s) will shed light on how the Department performs its statutory duties. The analysis shall also factor in the grade level of the employee, as it is well established that senior officials have a diminished expectation of privacy, and the sensitivity level of an employee's position.

Additionally, DHS policy affords Exemption (b)(7)(C) protection in addition to Exemption (b)(6) protection for employee names in the context of law enforcement records. Lastly, employee direct phone numbers may be withheld under Exemption (b)(2)(low), while employees' email addresses may be withheld under both Exemption (b)(2)(low) and Exemption (b)(6).

Any questions may be directed to Catherine Papoi, Director, Departmental Disclosure & FOIA or Michael Russell, Deputy Associate General Counsel for General Law.