



# Homeland Security

February 25, 2008

MEMORANDUM FOR: DHS FOIA Officers and Counselors

FROM: Hugo Teufel III   
Chief FOIA Officer

SUBJECT: DHS Management of FOIA Requests Seeking Agency Records  
on Ongoing Law Enforcement Investigations

This memorandum provides guidance on how Freedom of Information Act (FOIA) requests seeking agency records on ongoing law enforcement investigations should be handled Department-wide.

5 U.S.C. § 552(b)(7)(A) authorizes the withholding of law enforcement records or information, compiled for law enforcement purposes, that could reasonably be expected to interfere with ongoing enforcement proceedings or investigations. Determining the applicability of this Exemption 7 subsection requires a two-step analysis focusing on (1) whether a law enforcement proceeding or investigation is pending or prospective, and (2) whether release of information about it could reasonably be expected to cause some articulable harm.

Thus, as a general rule, an agency may invoke Exemption 7(A) so long as the law enforcement proceeding or investigation remains pending. When processing a FOIA request seeking agency law enforcement records pertaining to an ongoing law enforcement investigation, the component must review the records and perform the above two-step analysis. If a DHS component determines that release of the documents may cause some articulable harm, it should use the attached 7(A) denial template response. Components should not leave law enforcement requests open pending the closure of the subject investigation. Please review your current open cases and handle any such case according to this Departmental guidance.

Finally, FOIA Officers should be cognizant of the FOIA (c)(1) exclusion. This exclusion applies to situations in which the very fact of a criminal investigation's existence is as yet unknown to the investigation's subject, and disclosure of the existence of the investigation (which would be revealed by any acknowledgment of the existence of responsive records) could reasonably be expected to interfere with enforcement proceedings. In such circumstances, an agency may treat the records as not subject to the requirements of the FOIA and issue a "no records" response to the requester.

Please direct questions to Catherine Papoi, Director, Departmental Disclosure & FOIA at [REDACTED], or Michael Russell, Deputy Associate General Counsel for General Law at [REDACTED].