



Homeland
Security

Privacy Office, Mail Stop 0655

March 16, 2010

MEMORANDUM FOR: Component Heads

FROM: Mary Ellen Callahan
Chief FOIA Officer 

SUBJECT: *Freedom of Information Act* and 2010 Sunshine Week

James Madison, traditionally viewed as the Father of the United States Constitution, is also seen by many as a defender of open government. On March 16, we celebrate James Madison's birthday, National Freedom of Information Day, and "Sunshine Week." Madison famously wrote in 1822: "A popular government without popular information or the means of acquiring it, is but a prologue to a farce, or a tragedy, or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge gives."

Sunshine Week is dedicated to open government, with events surrounding Freedom of Information and government transparency. With Madison's views on the importance of an informed citizenry in mind, the occasion of James Madison's birthday is an excellent opportunity for DHS to review our *Freedom of Information Act* (FOIA) operations.

Last May, my office issued an overview memorandum¹ pertaining to FOIA, highlighting important changes in the application of FOIA under the current Administration, which is dedicated to an "unprecedented level of openness in government" and calls for discretionary disclosures in anticipation of public interest. It is imperative that all current and incoming DHS employees are cognizant of the direction from Attorney General Holder to work "in the spirit of cooperation" with the requester community and recognize "unnecessary bureaucratic hurdles have no place in the new era of open Government." As memorialized in the December 8, 2009 Office of Management and Budget Open Government Directive,² the three principles of transparency, participation, and collaboration form the cornerstone of an open government.

¹ Overview of the Freedom of Information Act Memorandum, available at http://www.dhs.gov/xlibrary/assets/foia/foia_overview_of_the_freedom_of_information_act.pdf.

² http://www.dhs.gov/xlibrary/assets/omb_open_government_directive_12_08_09.pdf.

Presumption of Disclosure

FOIA gives any person a right, enforceable in court, to access Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by exemption or exclusion. The basic purpose of FOIA is to ensure a fundamental principle of a democratic society—that the public has a right to access and be informed about the activities of its government. Under this Administration, agencies are to process FOIA requests with a presumption of disclosure and are further encouraged to make discretionary releases. Thus, even if an exemption would apply to a record, discretionary disclosures are encouraged. If full disclosure of a record is not possible, any portion of that record that is not subject to an exemption will be disclosed.

For purposes of FOIA, an agency record is either created or obtained by an agency, and the agency is either in possession or control of the record at the time a FOIA request is made. The term record has been defined broadly to include any information in any format maintained by an agency, and/or individuals in that agency, including electronic format. Typically, this may include emails, memoranda, correspondence files, or similar work product that are kept in hard copy or electronic files, information contained on discs or other storage media, handwritten notes, calendars, audio/videotapes, and photos. Documents obtained from another executive branch agency may also be processed through a referral and consultation process. With respect to documents created or possessed by contractors, they may also constitute agency records if they are under the control of DHS.

DHS Proactive Disclosures and Releases

The DHS FOIA Office continues to implement actively the Administration's sweeping policy changes. In August 2009, we released guidance³ to employees reminding them of their responsibility to embrace this new era of openness and emphasizing the need for compliance with the Administration's policy of proactive disclosure. The Department was directed by the DHS Chief FOIA Officer to proactively publish the following categories of information:

1. Historical daily schedules of the most senior agency officials (notated to reflect that officials may have deviated from the posted schedule and abridged as appropriate for security and privacy concerns);
2. Executed contracts and grants;
3. Management directives and instructions;
4. Congressional correspondence under DHS control;
5. FOIA logs; and,
6. Any records released pursuant to a FOIA request that have been, or are likely to become, the subject of three or more requests.

All Components updated their FOIA websites to accommodate increased postings with over 500 additions made proactively, as well as significantly increasing our "frequently requested" postings. New information is posted to many of the sites on a weekly basis. Additionally, in

³ Proactive Disclosure and Departmental Compliance with Subsection (a)(2) of the Freedom of Information Act (FOIA) Memorandum, available at http://www.dhs.gov/xlibrary/assets/foia/foia_proactive_disclosure.pdf.

2009, DHS shows an overwhelming increase in the number of FOIA responses where records have been released in full or where records have been released in part when compared with 2008.

Attached is the recently released 2010 Chief FOIA Officer Report that gives additional details about DHS disclosure operations. If you have further questions regarding FOIA, please feel free to contact either the Department's FOIA Office within the Privacy Office at 703-235-0790 or your Component's FOIA office.

Thank you for your continued support of the Department's transparency and openness initiatives.

Attachment