



12th Annual

FOIAXpress |

USER CONFERENCE &
TECHNOLOGY SUMMIT

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Marriott Marquis DC

The 2016 FOIA Amendments & Emerging FOIA Issues

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What We Said Before: 2016 FOIA Considerations

- Implement the 2016 FOIA Improvement Act
- Expanded Open Gov't Initiatives
 - Open Gov't Plan 2016 – 2018, includes FOIA
- Potential impact of Capstone
 - Effective 12/16; agencies must manage all email electronically, w/ some permanent retention
 - FOIA impact on searching & consultations w/ NARA (for permanent email)

FOIA Officers & Multi-Tasking?



2016 FOIA Improvement Act

What Should Have Already Been Done

- Post records requested 3+ times
- ID categories of records for pro-active posting
- Implement Foreseeable Harm standard
 - Applies only to Exemptions w/ discretionary release component (#'s 2, 5 & 7)
- Update response letters
 - Access to Public Liaison, OGIS & appeal rights

2016 FOIA Improvement Act

What Should Have Already Been Done

- Update Agency FOIA regulations
 - Must inc. foreseeable harm, fee changes, etc.
- Chief FOIA Officer must annually review:
 - Processing time, exemption use, annual training for FOIA staff, regs update, proactive posting, etc.
 - Goals: Recommend efficiency & enhancements; increased transparency & compliance w/ FOIA
- Addt'l Annual Report data elements
 - Ex.: # records available in e-format under (a)(2)

DOJ/OIP Instructions for 2018 *Chief FOI Officer Annual Report*

- DOJ instructions issued 9-27-17
- Emphasis on:
 - Applying the presumption of openness
 - Ensuring effective systems for responding to requests
 - Increasing proactive disclosure
 - Increasing use of technology
 - Improving timeliness & reducing backlogs
- Reports due to DOJ/OIP 1-29-18

2018 FOIA Program Issues

- Full Compliance with 2016 Amendments
- Budget & staffing restrictions
- Capstone access
- On-line Portal
- Managing requester expectations

2018 FOIA Issues

- No Atty General (White House) guidance memo, at this time
 - Breaks with tradition
 - Monitor Chief FOI Officer Council @ OIP; & FOIA Advisory Comm. @ OGIS; for guidance & training opportunities
 - Monitor Court decisions impacting FOIA using DOJ website (sign up for auto notice)
- Address 2016 FOIA revisions, if incomplete

FOIA's All About Resources

- No funds allocated under the statute (again)
- FOIA needs Mgm't commitment to resources in a climate of budget & staffing reductions
 - Create addt'l workload metrics, inc. required posting & 508 compliance
 - Help Mgmt. understand the need & cost of not maintaining support
 - Monitor atty fee awards; if plaintiff "substantially prevails" payment comes from your Agcy (what can you afford to lose?)

Implementation – Mgmt. Support

- Statutory requirements for expanded posting & proactive release
 - Consult w/ Chief FOI Officer & local mgmt.
 - IT/CIO support, esp. w/ remediation under section 508 of ADA
 - Expect staffing loss (freezes, attrition) to result in backlog increase
 - Adding addt'l staff may result in short term backlog increase, as Sr. staff review/mentor new staff, or complex records/issues

2018 FOIA Issues

- Ensure FOIA office access to Capstone
 - FOIA officer input re in-house retention times?
 - How are records indexed for retrieval?
 - Who manages meta data?
 - Will this expand referrals/consultations?
 - Are records being sent to NARA redacted or unredacted?
 - Do records contain info subject to Privacy Act (PII or “personally identifiable info”)

On-Line Portal & Oppt'y to Participate in Development & Testing

- Responsibility assigned to OMB in statute
- OIP/DOJ working with GSA's "18F" team
 - Solicited input from agency FOI officers
 - OIP memo of 9-20-17 states working "in the open"
 - Offers Agencies oppt'y to work w/ development (email to: National.FOIAPortal@usdoj.gov)
- Priorities:
 - Interoperational w/ existing systems in agencies
 - Submission of requests & to obtain status
 - Reporting & search capability

Ensure Operation of a Consolidated Online Request Portal

- Goal: allow requesters to submit requests to any agency, through a single website
 - May include additional tools that OMB understands will improve FOIA processing & compliance
 - Agencies may still maintain own online portals for request submission
- OMB must establish standards for “interoperability between the consolidated portal and agency case management systems.”

Single Portal Challenges?

- Amendments require creation of single On-line Portal for requesters to submit, to any agency
- Define how your Agcy uses existing portals
 - Centralized or de-centralized
 - Is the FOIA log linked to on-line payments, form letters, reporting, repository, etc.?
- Stay in contact w/ CIO office for updates or changes
 - Do you need IT to “build a bridge?”

Documentation – Part of the Administrative Record

- Foreseeable harm decisions
- Internal deliberation or predecisional; drafts; atty-client; denials, etc.
- Link to Capstone?
- Include unredacted copies of records?
- Privacy Act (PII) overlap?

Requester Community Concerns

- Facilitate requester understanding & communication thru education/outreach
- Requesters expect transparency cheaper & faster
 - Focus on clarification in letters & FOI Handbook
 - Initiate 2-way dialogue (see OGIS training)
- Use available resources - Public Liaison, OGIS & DOJ/OIP workshops
 - Negotiation w/ both requesters & agency staff
 - Phone rather than “still interested” letters

Requester Community Concerns

- OGIS & “FOIA Improvement: Making It Easier to Help FOIA Requesters”
- Highlight FOIA metrics on-line
 - # pages/records released
 - Quantify extent of pro-active release & posting
 - Inc. FACA, referrals & consultations, litigation, etc.
 - # requests rec'd & answered
 - Automatic email sent when data bases updated?
- Use technology & email, but only in “formal” style – it’s still a gov’t response under FOIA

Back to Resources

(Hard Work May not be Enough)

- If you can't "*do more with less*," or even "*the same with less*," do "less with less"
 - Don't log requests that aren't "perfected"
 - Send partial responses (esp. "simple" requests)
 - Ensure reasonable segregation
 - Make phone calls rather than "still interested" letters (document all communications)
 - Delegate - work with press office & CIO for 'net posting without FOIA officers
 - Don't duplicate – standardize responses (CD?)
 - Maximize use of staff talents – consider assigning work based on what do they do best

Questions?

Thanks for your insight,
dedication & hard work.

FOIA is a job that matters.