

12th ANNUAL FOIAXPRESS USER
CONFERENCE & TECHNOLOGY SUMMIT

Recent Significant FOIA Decisions

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Procedural Issues

Electronic reading rooms – question of enforceability



Procedural Issues

Contractor's records as agency records under Open Government Act if for "purposes of records management"



Procedural Issues

Can FOIA rights be waived in a plea agreement?



Procedural Issues

Scoping information in a responsive record

From: Wolfinger, Gretchen M. (TAX)
</o=USDOJ/ou=TAX/cn=Recipients/cn=Mailboxes/cn=gwolfing>
Sent: Thursday, May 22, 2014 4:17 PM
To: Bringer, Norah E. (TAX) <Norah.E.Bringer@tax.USDOJ.gov>
Subject: RE:

Non-Responsive

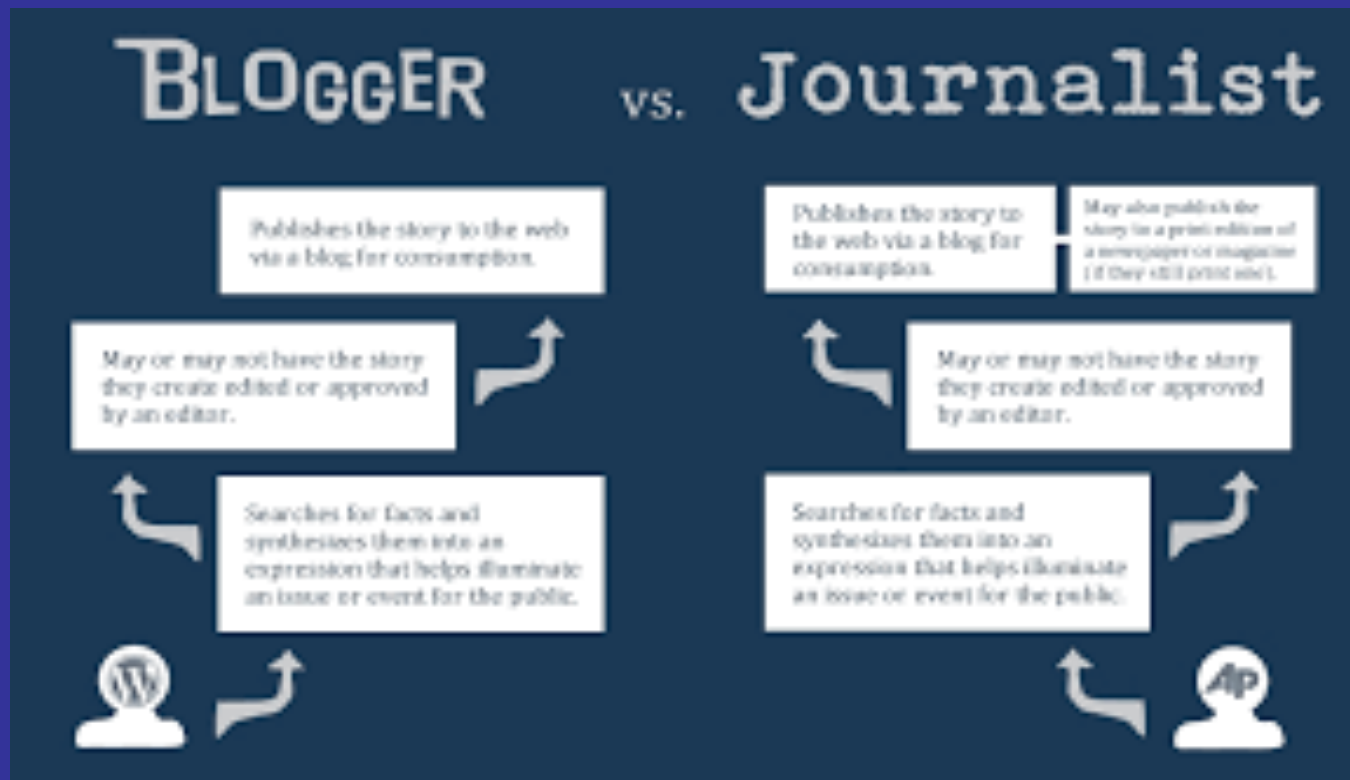
Procedural Issues

Adequate search: agency must search all, not just most, locations likely to contain responsive documents



Procedural Issues

Blogger as a “representative of the news media”



Procedural Issues

Fee waiver determination based on content and traffic of requester's website



Procedural Issues

Consultation with Office of Government Information Services after adverse determination insufficient to exhaust administrative remedies



Exemption 1

Protecting identity of, and price paid to, IT company that hacked into iPhone of San Bernardino terrorists on behalf of FBI



Exemption 4

Judicial action where submitters didn't respond to notice, and what happens when submitters didn't receive notice or didn't respond due to error or oversight



Exemption 5

Even though criminal prosecution documents given to and received from a foreign prosecutor may satisfy “consultant corollary” or “common interest privilege” they are not inter- or intra-agency records



Exemption 5

Protecting litigation policy book

United States Attorney Discovery Memo - Courtesy Copy

Department of Justice

Internal Memo

DISCOVERY POLICY FOR THE UNITED STATES DEPARTMENT OF JUSTICE

I. Policy Summary and Background

On January 4, 2010, Deputy Attorney General Gregory E. Craig issued a memorandum entitled [Guidance for Prosecutors Regarding Criminal Discovery/FRSAs Under Criminal Discovery Guidelines](#).¹ That same date, he issued a memorandum directing that USDOJ prosecutors' discovery policies govern the several enumerated issues. This comprehensive guidance covers all prosecutive matters of the United States Attorney General.

This policy provides guidance to the United States Attorney General in producing information to criminal defendants in accordance with statutory or procedural law and case law, the Constitution, DOJ policy, and local rules. These duties are defined in the Federal Rule of Criminal Procedure 16, the Alaska and Federal Rule of Criminal Procedure 17, *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 413 (1972), and the Discovery Rule, 18 P.S. § 5001 (Codebook of Pennsylvania and In re: Discovery of Brady Material, 2009 WL 1000000 (U.S. District Court for the District of Columbia, 2009). This policy also provides guidance to federal judges by DSD-13 on requests for discovery. In some respects, this policy requires broader production than the applicable law and local rules. It ensures that the responsible broad and early discovery of information and materials to the extent that broad and early discovery promotes the just resolution of a case and does not jeopardize witness safety, national security, or ongoing criminal investigation.

National Security Information

Recognizing the potential impact of access to classified information "prior" to a discovery challenge (particularly with regard to timing and early disclosure) of discovery, the composition of the prosecutive team, and various forms of potential discovery, on September 28, 2010, the Department issued specific guidance for prosecutors involved in such cases entitled "Policy and Procedures Regarding Discoverable

1. This policy is not intended to have the force of law or to create or confer any rights, privileges, or benefits in defendant. United States v. Casanova, 640 U.S. 741 (2013).

Law Office of W.F. Casey | Casey Jr. <http://www.caseylaw.com/> | 410-322-2020

Exemption 6

No protection for identities of Army personnel in Clean Water Act records where names are not in list format and there is a public interest in disclosure



Exemption 7

Determining whether records are compiled for law enforcement purposes



Exemption 7(C)

Finding protecting identities of released unauthorized immigrants' privacy interest outweighs public interest in effects of government's release decisions



Exemption 7(E)

Protecting civil law enforcement agency's
IT vulnerabilities study



Exemption 9

Water wells qualify as wells under Exemption 9

