

From: Martin Virgilio
To: Landau, Mindy; Reed, Carol Ann
Date: 12/4/01 8:05AM
Subject: Re: Fwd: Freedom of Information Act

*did not define info
said release of info would
provide "harm"
would defining sensitivity
change this*

m JV-c

Mindy

I agree but the announcement has directed the staff to take an action based on an assessment of "information that could be potentially helpful to an adversary (but not Safeguards Information)".

*NMSS
in base*

We state , in part, ..."If the staff locates records that they believe contain information that could be potentially helpful to an adversary (but not Safeguards Information), they should list these records separately and provide a statement explaining the sensitivity of the information.

The office FOIA coordinator's response must indicate that a senior office manager agrees that the records contain information that could be potentially helpful to an adversary and that they agree with the sensitivity statement accompanying the recommendation to withhold the records."

I believe that the guidance we developed would be helpful to the staff and help ensure consistency and quality of our actions.

Please call me when you have a moment.

M

>>> Mindy Landau 12/04/01 07:45AM >>>
Marty,

*EDO
rel.*

I think we should tread carefully here and not confuse the staff. From what the lawyers have indicated, the FOIA requirements are unaffected by the criteria we are internally proposing. We need to think carefully about how we inform the staff of these differences and consider the timing of any Commission decision....

Mindy

>>> Martin Virgilio 12/04/01 07:35AM >>>
Carol Ann

*NMSS
reference*

We (NMSS/NRR/OGC) have recently developed criteria to help the staff identify "information that could be potentially helpful to an adversary (but not Safeguards Information)". This criteria was reviewed and approved by the DEDOs and we are in the process of notifying the Commission.

I recommend that this criteria be distributed to all staff; otherwise, we will have individual judgements this topic.

Marty

CC: Abu-Eid, Bobby; Brach, E. William; Cool, Donald; Essig, Thomas; Federline, Margaret; Flanders, Scott; Frant, Susan; Gillen, Daniel; Greeves, John; Hodges, M. Wayne; Kokajko, Lawrence; Linehan, John; Miller, Charles; Mohseni, Aby; Moore, Janice; Norry, Patricia; Paperiello, Carl; Piccone, Josephine; Pierson, Robert; Poland, Catherine; Rathbun, Patricia; Weber, Michael

TT-18

MJV ✓

From: Network Announcement
To: Network Announcement
Date: 12/3/01 5:47PM
Subject: Freedom of Information Act

jul.g

Please direct all replies to Carol Ann Reed (CAR2).

Freedom of Information Act

The purpose of this announcement is to notify employees of two changes to NRC's Freedom of Information Act (FOIA) procedures.

1. As a result of the change in administration, a new standard has been set for the defense of FOIA law suits by the Department of Justice (DOJ).

The New Standard: Attorney General Ashcroft's October 2001 policy provides that DOJ will defend decisions to withhold information unless the use of a FOIA exemption lacks a sound legal basis, both factually and legally, or presents an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.

Change to NRC's FOIA Process: "Forseeable harm statements" will no longer be required when office FOIA coordinators submit records to be withheld based on application of a FOIA exemption.

2. As a result of the September 11, 2001, terrorist attack, the staff believes that recent FOIA requests have sought records that could be potentially helpful to an adversary. When reviewing records subject to the requests, the staff should apply the FOIA exemptions the same way they were applied in the past. If information is withholdable because it is Safeguards Information, follow the normal procedures for this type of information.

Change to NRC's FOIA Process: If the staff locates records that they believe contain information that could be potentially helpful to an adversary (but not Safeguards Information), they should list these records separately and provide a statement explaining the sensitivity of the information. If it is not apparent from the record itself, please note who originated the record (NRC or an outside entity) and whether it has previously been made publicly available. The office FOIA coordinator's response must indicate that a senior office manager agrees that the records contain information that could be potentially helpful to an adversary and that they agree with the sensitivity statement accompanying the recommendation to withhold the records. The FOIA staff will work with OGC to review such information for possible withholding.