

Ash, Darren

From: Ash, Darren
Sent: Wednesday, September 30, 2009 1:39 PM
To: Nichols, Russell
Cc: Corley, Cherrie
Subject: Re: ASAP Member Alert - DOJ Issues Guidance on Chief FOIA Officer Reports

Russ,
Thanks!
Darren

From: Nichols, Russell
To: Ash, Darren; Boyce, Thomas (OIS); Schaeffer, James; Holonich, Joseph
Cc: Olive, Karen; Sealing, Donna; Janney, Margie
Sent: Wed Sep 30 13:31:44 2009
Subject: FW: ASAP Member Alert - DOJ Issues Guidance on Chief FOIA Officer Reports

I received this from our FOIA professional organization a few minutes ago. Don't know how soon the actual requirement will come from DOJ but I wanted you to know we have it and we'll be working it.

From: asap@bostrom.mmsend.com [mailto:asap@bostrom.mmsend.com] **On Behalf Of** asap@bostrom.com
Sent: Wednesday, September 30, 2009 12:58 PM
To: Nichols, Russell
Subject: ASAP Member Alert - DOJ Issues Guidance on Chief FOIA Officer Reports

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ATTN: ASAP Members:

Today at 12:00 noon, the US Department of Justice Office of Information Policy went live with guidance for Chief FOIA Officer Reports. The guidance summarizes President Obama's FOIA Memorandum, Attorney General Holder's FOIA Guidelines, and Agency Accountability. It then addresses the content of Chief FOIA Officer Reports in five steps and addresses the timing for submission. The guidance is reprinted below or you can access the guidance on FOIA POST at

<http://www.usdoj.gov/oip/foiapost/2009foiapost18.htm>

Guidelines for Chief FOIA Officer Reports to the Department of Justice Pursuant to Attorney General Holder's FOIA Guidelines

President Obama's FOIA Memorandum

On his first full day in office President Obama demonstrated his commitment to the ideals of transparency and openness by issuing a Memorandum to the heads of all Executive Branch Departments and agencies calling on them to "renew their

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commitment to the principles embodied in FOIA." The President directed all agencies to administer the FOIA with a clear presumption in favor of disclosure, to resolve doubts in favor of openness, and to not withhold information based on "speculative or abstract fears."

In addition, the President called on agencies to ensure that requests are responded to in "a spirit of cooperation," that disclosures are made timely, and that modern technology is used to make information available to the public even before a request is made. To carry out these responsibilities, the President directed the Attorney General to issue new guidelines governing the FOIA.

Attorney General Holder's FOIA Guidelines

In accordance with the President's directive, on March 19, 2009, Attorney General Holder issued new FOIA guidelines which called on all agencies to reaffirm the government's "commitment to accountability and transparency." The Guidelines stress that the FOIA is to be administered with the presumption of openness called for by the President. The Attorney General strongly encouraged agencies to make discretionary disclosures of information. He also directed agencies not to withhold information simply because they may do so legally and to consider making partial disclosures when full disclosures are not possible.

In his FOIA Guidelines the Attorney General went beyond addressing the principles applicable to applying the presumption of disclosure. He also comprehensively addressed the need for each agency to establish effective systems for improving transparency. In doing so he emphasized that "[e]ach agency must be fully accountable for its administration of the FOIA."

Agency Accountability

The Attorney General highlighted the key role played by each agency's Chief FOIA Officer and emphasized that "[i]mproving FOIA performance requires the[ir] active participation." Accordingly, the Attorney General directed agency Chief FOIA Officers to review "all aspects of their agencies' FOIA administration" and to report each year to the Department of Justice on the steps taken "to improve FOIA operations and facilitate information disclosure."

In accordance with the Attorney General's FOIA Guidelines, the Office of Information Policy (OIP) was charged with the responsibility for providing guidance to agencies on the timing and content of Chief FOIA Officer Reports to the Attorney General. Those guidelines are set out below. All agencies should follow this format in preparing and submitting their Chief FOIA Officer reports. Once completed, these reports should be posted on each agency's website. OIP, in turn, will make all the Chief FOIA Officer Reports available to the public on the Department of Justice's website.

Content of Chief FOIA Officer Reports

I. Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's FOIA Memorandum and the Attorney General's FOIA Guidelines is the presumption of openness.

1. Describe below the steps your agency has taken to ensure that that presumption is being applied to all decisions involving the FOIA. This section should include a discussion of the range of steps taken by your agency to apply this presumption, from publicizing the President's FOIA Memorandum and Attorney General's FOIA Guidelines and providing training on them, to implementing the presumption in response to FOIA requests and administrative appeals, with examples or statistics illustrating your agency's action in making discretionary releases of records or partial releases when full disclosure is not possible.

2. Report whether your agency shows an increase in the number of requests where records have been released in full or where records have been released in part when compared with those numbers in the previous year's Annual FOIA Report.

II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests

As the Attorney General emphasized in his FOIA Guidelines, "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

III. Steps Taken To Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received. Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines.

IV. Steps Taken To Greater Utilize Technology

A key component of the President's Memorandum was the direction to "use modern

technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. For this section of the Chief FOIA Officer Report, please answer the following questions:

- 1.) Does your agency currently receive requests electronically.
- 2.) If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically.
- 3.) Does your agency track requests electronically.
- 4.) If not, what are the current impediments to your agency utilizing a system to track requests electronically.
- 5.) Does your agency use technology to process requests.
- 6.) If not, what are the current impediments to your agency utilizing technology to process requests.
- 7.) Does your agency utilize technology to prepare you agency Annual FOIA Report.
- 8.) If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report.

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs is an ongoing agency effort. Both the President and the Attorney General emphasized the importance of improving timeliness in responding to requests. Section XII of your Annual FOIA Report includes figures that show your agency's backlog of pending requests and administrative appeals for the previous fiscal year and for this current fiscal year. Your Chief FOIA Officer Report should address the following elements.

1. If you have a backlog, report here whether your backlog is decreasing. That reduction should be measured both in terms of the numbers of backlogged requests and administrative appeals that remain pending at the end of the fiscal year, and in terms of the age of those requests and appeals.
2. If there has not been a reduction in the backlog describe why that has occurred and what steps your agency is taking to bring about a reduction.
3. Describe the steps your agency is taking to improve timeliness in responding to

requests and to administrative appeals.

Timing for Submission of Chief FOIA Officer Reports

In order to appropriately ensure that agency Chief FOIA Officer Reports address all the elements detailed above, each agency must submit a draft of their Chief FOIA Officer Report to OIP for review by March 1, 2010. The drafts should be submitted by e-mail to DOJ.OIP.FOIA@usdoj.gov.

Each agency Chief FOIA Officer must then submit a finalized Chief FOIA Officer Report to the Department of Justice by March 15, 2010, to the e-mail address noted above.

Each agency must also post its Chief FOIA Officer Report on its website.

Contacts

Agencies with questions regarding this matter should contact Vanessa Brinkmann, Ken Hendricks, or Tom Hitter at the Department of Justice's Office of Information Policy at (202) 514-3642. *(posted 09/30/2009)*

Go to: **Main FOIA Post Page**

<http://www.usdoj.gov/oip/foiapost/2009foiapost18.htm>

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