



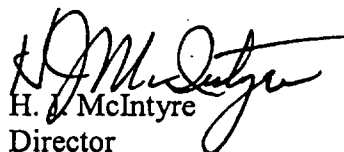
DEPARTMENT OF DEFENSE  
DIRECTORATE FOR FREEDOM OF INFORMATION AND SECURITY REVIEW  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155  
19 NOV 2001  
01-CORR-111

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: DoD Guidance on Attorney General Freedom of Information Act (FOIA) Memorandum

On October 12, 2001, the Attorney General (AG) issued a memorandum for all heads of federal departments and agencies concerning the FOIA. On October 15, the U.S. Department of Justice (DOJ) Office of Information and Privacy (OIP) distributed the AG memorandum and stated that the new policy supersedes the previous FOIA policy statement issued by DOJ in October 1993. Copies of the AG and OIP memorandums are attached. On October 18, 2001, a FOIA officers conference was hosted by OIP in Washington D.C. to discuss the AG memorandum and other FOIA issues. The conference focused on interpretation of the AG memorandum and discussion on the possible use of the (b)(2) High (high 2) exemption in withholding information potentially of use to terrorists.

- Effective immediately, DoD components will adopt the **Sound Legal Basis** standard as reflected by the AG memorandum. The "foreseeable harm" standard is superseded. Changes to DoD 5400.7-R, "DoD Freedom of Information Act Program," will be forthcoming. Components will present a rationale for denial that DOJ will be able to defend if the denial is litigated. Components are advised to consult their respective FOIA policy and/or legal offices, or this Directorate as appropriate, to determine if a proper basis for denials of information exists.
- DoD components will apply the low 2 exemption as applicable. Be advised that the low 2 threshold applies **only** to internal matters of a relatively trivial nature. Components are encouraged to consult the DOJ "Freedom of Information Act Guide & Privacy Act Overview" for an in depth discussion on the legal history of the use of the low 2 exemption.
- Discretionary disclosures are no longer encouraged.
- DoD components may consider application of the high 2 exemption to deny information that may be of use to terrorist organizations, but must be prepared to present a **Sound Legal Basis** in support of their determinations.

  
H. A. McIntyre  
Director

Attachments:  
As stated

