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Subject: New FOIA Policy Issued by Attorney General

As you may be aware, on October 12, 2001, Attorney General John Ashcroft issued this Administration's new FOIA policy which differs in several important respects from the policy issued by former Attorney General Janet Reno. The new FOIA policy articulated in the Ashcroft memorandum supersedes the prior policy that documents should be released even if exempt, unless a foreseeable harm would occur from the release. The new policy does not actively encourage discretionary disclosures. However, the policy does recognize the agencies' ability to make discretionary disclosures.

When considering whether to make a discretionary disclosure, the Attorney General advises agencies to carefully consider the facts and information in the documents and consider the interests that might be impacted by the disclosure, such as institutional, commercial, and privacy interests.

The Ashcroft memorandum and accompanying DOJ guidance also address the procedures for withholding documents. The memorandum states that in making decisions regarding disclosure, agencies should carefully consider the values and interests underlying the exemptions. Before withholding documents, agencies should be sure that they have both a sound factual and legal footing for withholding the documents. Under the new policy, DOJ has advised it will defend withholdings of documents unless they lack a sound legal basis for the withholding. (The Ashcroft memorandum and DOJ guidance may be found at <http://www.usdoj.gov/oip/foiapost/2001foiapost19.htm>)

Under DOI's FOIA procedures (Chapter 5.2 of the Departmental FOIA Handbook (383 DM 15)), an exempted record may be released to a requester when, in the bureau's judgment, the interests of the Government, which underlie the exemptions, would not be jeopardized, unless disclosure is restricted by statute or Executive order. Bureaus are required to consult with their Designated FOIA Attorney prior to making a discretionary release of information.

Given the security issues we are now facing in light of the events of September 11, and the fact that there is a high turnover of FOIA personnel in the field with little or no FOIA training, we would like to go one step further and require the bureaus to obtain the written approval (i.e., surname) of their FOIA attorneys before making discretionary releases under the FOIA. I have discussed the proposed procedures with Dan Jorjani and Bob Moll, SOL-GL, and they concur. Please let me know if you agree with this approach.
Thanks.

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