



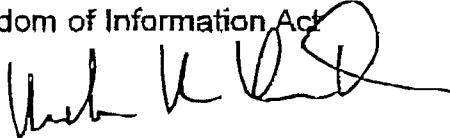
**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

General Counsel

Memorandum

Subject: Information: Freedom of Information Act **Date:** October 25, 2001

From: Kirk K. Van Tine 
General Counsel

To: Chief of Staff
Director, Public Affairs

I understand that you have asked about the considerations the Department uses for discretionary releases of information under the Freedom of Information Act ("FOIA").

Under FOIA any person has a right to obtain access to federal agency records, except to the extent that the records are protected from disclosure by one of nine statutory exemptions. The exemptions generally authorize, but do not require, the withholding of government records. A list of the statutory exemptions is attached.

On October 12, 2001, Attorney General Ashcroft issued a memorandum outlining this Administration's policy on release of sensitive documents under FOIA. This memorandum emphasizes the Administration's commitment to full compliance with FOIA as an important means of maintaining an open and accountable system of government. At the same time, however, it recognizes the importance of protecting the sensitive institutional, commercial, and personal interests that can be implicated in government records – such as the need to safeguard national security, maintain law enforcement effectiveness, respect business confidentiality, protect internal agency deliberations, and preserve personal privacy.

The Attorney General's memorandum advises that the Department of Justice will defend agency actions under FOIA "unless they lack a sound legal basis." This is a change from the previous standard under which Justice would only defend withholdings, even when clearly authorized by exemptions, when necessary to prevent "foreseeable harm." Under the new policy, if records clearly fall within one of the nine statutory exemptions from required disclosure, I believe there is a "sound legal basis" for withholding, and the Department generally has the discretion to decide whether to release or withhold the records. The judgment whether the records fall within one of the exemptions is a legal issue.

A copy of the Attorney General's memorandum is attached for your information. We have distributed it to all FOIA contacts in the Department and will be providing further advice to the operating administrations as warranted.

Attachments