

4/17/02

CURRENT POLICY ISSUES/EFOIA

- I **Attorney General Ashcroft's October 12, 2001 FOIA Memorandum** (see page II-6)
- A. Underscores commitment to full compliance with FOIA.
  - B. Important interests in maintaining open and accountable government.
  - C. Important institutional, commercial, and personal interests to be protected.
  - D. Recognition of continued agency practice of making discretionary disclosure of exempt information
  - E. Discretionary disclosures to be made after careful consideration of interests protected by applicable exemption.
  - F. "Sound legal basis" standard governing Department of Justice's decision as to whether to defend agency's action in court.
- II **Supreme Court Rules in Exemption 5 Case: *Dep't of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1 (2001)** (see pages IV-136-40)
- A. Agency/Tribes "trust relationship" insufficient to satisfy "inter-agency or intra-agency" threshold.
  - B. Implicitly recognizes "outside consultant" line of cases.
  - C. Self-interest alone on part of consultant is not disqualifying.
  - D. Disqualifies only "an interested party [that is] seeking a Government benefit at the expense of other applicants."
  - E. Narrows potential application of settlement privilege.
  - F. Potential Exemption 3 legislation.

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### III Supreme Court Refuses to Hear Exemption 7(A) Case: *Maydak v. United States*

*Dep't of Justice*, 218 F.3d 760 (D.C. Cir. 2000), *cert. denied*, 533 U.S. 950 (2001) (see pages IV-141-42)

- A. Waiver in litigation found when agency invoked only Exemption 7(A), which subsequently became inapplicable at conclusion of the requester's criminal prosecution.
- B. Agency not permitted to supplement its defenses by later asserting other exemptions.
- C. Possible applicability to other threshold defenses.
- D. Applies only in litigation, not at administrative level.

### IV Safeguarding Information Regarding Weapons of Mass Destruction and Other Sensitive Documents Related to Homeland Security (see pages IV-155-58)

- A. Classified records – Exemption 1
- B. Unclassified records – Exemptions 2, 3, and 4.

### V Summary of Key E-FOIA Issues

- A. Format of disclosure – (a)(3)(B).
- B. Electronic searches – (a)(3)(c).
- C. Reading room treatment for frequently requested records – (a)(2)(D).
- D. Electronic reading room – (a)(2).
- E. Time limit/backlog provisions: Expedited processing – (a)(6)(E).
- G. Annual reports – (e).
- H. Current E-FOIA resources
  - 1. OIP Supplemental Guidance on Annual Reports (see pages IV-143-50).
  - 2. OIP memo on GAO E-FOIA Implementation Report (see pages IV-129-35).