



UNITED STATES DEPARTMENT *of* JUSTICE

Achieving Transparency Through Proactive Disclosures

Melanie Ann Pustay
Director, Office of Information Policy
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The “FOIA is often explained as a means for citizens to know ‘what their government is up to.’”

The Supreme Court stressed that “[t]his phrase should not be dismissed as a convenient formalism.” Rather, “[i]t defines a structural necessity in a real democracy.”



FOIA is not only about “FOIA Requests”

The law also requires agencies to make certain categories of records available to the public without a FOIA request.



*These are called
“proactive disclosures”*



Proactive Disclosures

Enhance transparency

- Inform citizens about “the operations and activities” of government

...with more efficiency

- Reduce the need to respond to numerous requests for the same records



Agencies must **routinely** make specific operational and frequently requested records proactively available without waiting for a FOIA request.

Proactive disclosures are usually made by posting documents online.



The FOIA's nine exemptions apply to records required to be disclosed proactively

Agencies should review prior to posting, making discretionary releases when appropriate, and

If exemptions apply, they must be marked on the posted document



Four Categories of Required Disclosures

Three types of “operational” documents:

1. Final Opinions & Orders
2. Specific Policy Statements
3. Administrative staff manuals & instructions to staff that affect a member of the public



And frequently requested records:

4. FOIA-processed records on popular topics that are or are likely to be the subject of multiple FOIA requests



Exceptions to Required Disclosures

- Records that are already made available under (a)(1)
- Records that are otherwise offered for sale
- Exempt records



During Sunshine Week, OIP published new guidance on proactive disclosures

Proactive Disclosure of Non-Exempt Agency Information: Making Information Available Without the Need to File a FOIA Request (3/16/15)

<http://www.justice.gov/oip/oip-guidance-5>



Overview of Proactive Disclosure Guidance

The President and Attorney General stressed the importance of:

- Taking affirmative steps to make information public
- Readily and systematically posting information online



Overview of Proactive Disclosure Guidance

Increased Use of Technology

- Paper based “Reading Rooms” have transitioned to online “FOIA Libraries”
- Social Media alerts public to new releases



Overview of Proactive Disclosure Guidance

Method of Disclosure

- As matter of good customer service, agencies are encouraged to work with requesters who do not have access to the internet



Overview of Proactive Disclosure Guidance

“Frequently Requested” Records

- Purpose: Help agencies achieve greater efficiency by reducing need to respond to multiple requests for the same records
- When agencies make available “previously released records on a popular topic” that can reduce the number of requests for that material



Overview of Proactive Disclosure Guidance

Identifying “Frequently Requested” Records

- Systematically review each request when it is first received to determine whether your agency has received other requests that will involve the same or similar records.



Overview of Proactive Disclosure Guidance

Identifying “Frequently Requested” Records

- Absent multiple requests, consider whether responsive records concern a popular topic that could become the subject of future requests.
- During the course of processing requests, flag records that are common to multiple requests.



Overview of Proactive Disclosure Guidance

Posting Before Receipt of a Request

- Implement systems and establish procedures to identify records of interest to the public on an ongoing basis and to systematically post such records.



Overview of Proactive Disclosure Guidance

Posting Before Receipt of a Request

- Link FOIA Professionals and program offices to help identify records appropriate for posting.
- Establish procedures in key offices where officials routinely identify in advance, or as records are finalized, those records that are good candidates for posting.



Overview of Proactive Disclosure Guidance

Ensuring Usability of Posted Information

- Consult with your IT professionals, Open Data Policy, Digital Government Strategy, and Digital Services Playbook
- Doing so can identify best practices on posting documents in a machine-readable format to optimize their usefulness to the public



Overview of Proactive Disclosure Guidance

Choosing a Website Location

- FOIA Library (default location for frequently requested records), or
- Other website location (such as a webpage devoted to the records' topic)



Overview of Proactive Disclosure Guidance

Choosing a Website Location

- Periodically review FOIA Library to ensure that it is organized, user-friendly, up to date, and that documents are easy to locate



The automatic disclosure provisions of the FOIA work in tandem to ensure that information about what the government is “up to” is released consistently, routinely, and promptly



Proactive disclosures inform the public about the operations of their government, and they efficiently satisfy the demand for records of interest to multiple people



Beyond the legal requirements imposed by the FOIA, agencies should, as a matter of discretion, be routinely posting material that is of interest to the public, taking advantage of technology and new tools to make that posted data usable and easily accessible.



By doing so, they will be answering the President's and Attorney General's call to post more information online than is required, so that the public will be better informed "about what is known and done by their government."



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Thank you for your time.