




The Secretary of Energy
Washington, D.C. 20585

June 5, 2009

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM: STEVEN CHU 
SUBJECT: Freedom of Information Act

On his first day in office President Barack Obama issued a memorandum on the Freedom of Information Act (FOIA) and his commitment to openness in Government. The Attorney General also issued a guidance memorandum in furtherance of the President's memorandum. The Attorney General's memorandum reiterates our Nation's fundamental commitment to open Government and focuses on three key points that agencies should comply with to ensure that open Government is realized in practice.

First, we are to work proactively and promptly regarding processing FOIA requests. We should utilize modern technology to inform the public on the operations of the Government and take affirmative steps to readily and systematically post information online in advance of a FOIA request.

Second, we are to adopt a presumption of openness. We are encouraged to make discretionary disclosures, when possible, and should not withhold information merely because we have a legal basis to do so. We should not withhold information to shield public officials from embarrassment or to hide errors or failures or because of speculative or abstract fears. In addition, whenever we determine that we cannot make full disclosure of a requested record, we must consider whether we can make a partial disclosure. The Department of Justice (DOJ) will only defend a denial of a FOIA request if the agency reasonably foresees that disclosure will harm an interest protected by one of the exemptions, or if disclosure is prohibited by law. Requested records must be evaluated on a case by case basis to assess sensitivity of content, age, and potential for causing a foreseeable harm. You must seek guidance from your local FOIA Office, Chief Counsel, or the Office of the General Counsel at Headquarters when making decisions to withhold information.

Third, the memorandum emphasizes that FOIA is everyone's responsibility. This means that all DOE employees have the responsibility to ensure the success of the agency's FOIA program. We can no longer use competing agency priorities and insufficient technological support as a basis for not responding to requests expeditiously. DOE employees should no longer view FOIA as an additional duty. It is your responsibility to ensure that FOIA requests are responded to in a timely manner. When faced with multiple or voluminous requests, Directors and Assistant Secretaries should ensure that adequate staff is designated or re-assigned to facilitate the processing of requests.

On April 17, the DOJ issued more detailed guidance on how agencies should proceed in these areas. The guidance can be found at <http://www.usdoj.gov/oip/foiapost/2009foiapost8.htm>.



I want to make it clear that DOE will adhere to the President's and Attorney General's guidance. I have asked the Chief FOIA Officer to keep me abreast of the progress made by the Department with regard to processing FOIA requests in an expedient manner.

If you have any questions about the Attorney General's memorandum or its implementation at DOE, please contact Ms. Ingrid Kolb, Chief FOIA Officer, at (202) 586-2550.