



# The Freedom of Information Act

What the Government Doesn't Want You to  
Know, and How You Can Find Out

Presentation for:

**Conservative Political Action  
Conference**

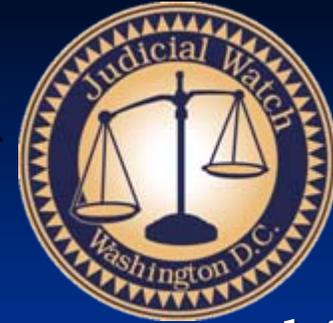
Washington, DC

February 27, 2009

# Agenda

- JW: Investigations, Litigation
- History of FOIA
- Understanding and Using FOIA
- Requests, Denials, Appeals & Exemptions.
- Record Analysis & Exploitation.
- Examples, What Ifs, Q&A.

# Judicial Watch



- Promotes transparency, integrity, accountability.
- In government, politics & the law.
- As an:
  - Educational foundation,
  - Public interest law firm,
  - Member of the media.
- Use of open records & open meetings laws.
- Fidelity to the Rule of Law.

# History of FOIA

- 1955-65: John Moss, Donald Rumsfeld
- July 4, 1966: LBJ enacts FOIA
- 1972-74: Problems, Oversight Hearings
- 1996: “E-FOIA” amendments
- 2007: OPEN Government Act
- January 2009: Obama’s FOIA memorandum

# FOIA Overview

- Can be used by anyone, regardless of citizenship.
- No requirement to show purpose or need.
- Must be in writing, including fax/email.

# FOIA Overview

- All executive agencies are subject to FOIA, including EOP & independent regulators.
- Not subject to FOIA:
  - Congress & the Courts.
  - Personal staff of the President.
  - State & local governments (State laws).
  - Private entities/corporations.

# FOIA Overview

- A proper request:
  - Reasonably describes the records sought.
  - Complies with the agency's published regulations.
  - Requester should always clearly state contact info for clarification.

# FOIA Overview

- Who can make a request?
  - “Any person.”
  - Individuals, corporations, associations, state & local governments, foreign governments.
- Exceptions -- those not permitted:
  - Federal agencies.
  - Fugitives.
  - Foreign governments re: intelligence.

# FOIA Overview

- What is an agency record?
  - Created or obtained by an agency.
  - Under agency control.
  - Includes paper, tapes, digital, photo, video, electronic, etc.
  - Must provide in form requested if “readily reproducible.”

# FOIA Overview

- Time Limits
  - 20 working days to respond.
  - One 10 working day extension for:
    - Searching/collecting records from other offices.
    - Voluminous responsive records.
    - Consultation with another agency/component.
  - Agencies can NOT charge fees on overdue FOIAs

# FOIA Overview

- New time limit “circumstances”:
  - Unusual -- involves field offices, voluminous records, or consultation with 2(+) components or an outside agency.
  - Exceptional -- involves workload excuses tied to demonstrating backlog reduction - OR - requester refusal to reasonably modify/clarify a request or time frame.

# FOIA Overview

- Expedited Processing
  - Compelling need -- imminent threat to life or physical safety of an individual.
  - Urgency to inform the public concerning FedGov activity from a requester primarily engaged in disseminating information.
  - Agencies can create other standards.

# FOIA Overview

- The Search for Records
  - Reasonably calculated to locate responsive records.
  - Not locating all requested records does not cast doubt on an otherwise reasonable search.
  - Applies to electronic records as well.
  - “Consultations” & “Referrals.”

# FOIA Overview

- Administrative Appeals.
  - Designated agency official reviews procedure.
  - All or part of request denied, or no responsive records located.
- Judicial Review.
  - Lawsuit in US District Court.
    - Your locality.
    - District of Columbia.

# FOIA Overview

## ■ Fees

- Agencies may charge reasonable direct costs.
- OMB established a uniform fee schedule.
- Types:
  - Search
  - Review (commercial requesters only)
  - Duplication
- Time limit violation voids assessment.

# FOIA Overview

- More re: Fees
  - News media & non-profits:
    - Acknowledgment of evolution of news delivery.
    - Duplication fees only -- 100 free pages.
  - “Other”:
    - Search & duplication charges.
    - 2 hours & 100 pages free.
  - Payment in advance over \$250.

# FOIA Overview

- Resources & References
  - Judicial Watch Open Records Project.
  - JW Website.
    - [www.JudicialWatch.org](http://www.JudicialWatch.org)
  - Department of Justice FOIA Guide.
    - [www.usdoj.gov/oip](http://www.usdoj.gov/oip)
  - Reporters Committee for Freedom of the Press.
    - [www.rcfp.org](http://www.rcfp.org)

# Records Analysis & Exploitation

- You've got your records -- now what?
  - Goals of original request met?
  - Administrative and/or legal action.
  - Public education.
    - Reports, newsletters, etc.
    - Media opportunities
- The request in hindsight.
- “Externals” of record production.

# Records Analysis & Exploitation

- Claims of Exemption.
  - 9 categories of information that may lawfully be exempt from disclosure.
  - 3 “exclusions” for law enforcement purposes.
  - Can be challenged in an appeal.
  - Challenged by judicial review.

# Exemptions

- b(1) -- Classified information (“Glomar”).
- b(5) -- “deliberative process” or not available by law to a party in litigation with the agency.
- b(6) -- Privacy. “Personnel and medical files and similar files” where disclosure “would constitute a clearly unwarranted invasion of personal privacy.”
- b(7)-- Ongoing law enforcement (LE) proceedings.

# Exclusions

- c(1) -- LE “Glomar”
- c(2) -- LE informant, unless officially confirmed  
-- then releasable.
- c(3) -- Special category FBI records.

# JW's "Open Records Project"

- Defining requirements & composing records request strategy.
- Identifying agencies, components, activities.
- Making the request.
- Record production review and analysis.
- Handling denials, exemptions & appeals process.
- Litigation

# Discussion Period

- Examples
- What ifs
- Q&A
- FOIA “War Stories”



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