

EXHIBIT 1

FOIA UPDATE: OIP GUIDANCE: PRIVACY PROTECTION CONSIDERATIONS

January 1, 1982

FOIA Update
Vol. III, No. 4
1982

OIP Guidance

PRIVACY PROTECTION CONSIDERATIONS

Although determinations made under the Freedom of Information Act of the extent to which personal privacy can be protected generally require an individualized case-by-case analysis, there are two particular types of requests for personal information which can consistently be handled according to general guidelines. Both such types of requests for personnel information regarding federal employees and for the current home addresses of private citizens -- can be made of virtually every federal agency.

As all agencies maintain personal information about their employees in personnel files, the need to make consistent disclosure determinations with respect to such information is universal. Under Office of Personnel Management regulations, certain basic information on most federal employees must routinely be made available to the public: (1) name; (2) present and past position titles; (3) present and past grades; (4) present and past salaries; and (5) present and past duty stations, including specific location details such as room number. See 5 C.F.R. § 294.702(a) (1982). (OPM will soon propose, in a new Part 293, slight revisions of two of these basic items and the addition of an item covering position descriptions and performance elements and standards.)

Further it is the policy of the Department of Justice, in light of prevailing FOIA case law, to release additional items of information in personnel files, particularly pertaining to the professional qualifications of federal employees. Such information generally disclosed includes post-graduate or technical education in preparation for the employee's professions; all prior employment in State or Federal Government positions; prior employment in the private sector related to an employee's duties; awards and honors received, and membership in professional groups.

The Department of Justice further endorses release of the fact of recommendations for promotions, appointments or reassignments, letters of commendation from professional associates and colleagues; appointment affidavits and oaths of office; and creditable service for leave purposes.

Information which should be withheld from third parties pursuant to Exemption 6 generally pertains to an employee's personal life and family status. Matters capable of causing embarrassment and or harassment and which are not pertinent to the employee's duties should also be protected under Exemption 6. Such privacy interests specifically include, but are not limited to: place and date of birth; age; marital status; home address and telephone number; medical records; details of health and insurance benefits; the substance of promotion recommendations; supervisory assessments of professional conduct and ability; information concerning or provided by relatives and references; prior employment not related to the employee's occupation; primary, secondary and collegiate education; allegations of misconduct or arrests; and military service number and Social Security number.

Such delineations are based upon the principle that the public is entitled to information that generally pertains to the qualifications for and the performance of federal employment, but that federal employees are as fundamentally entitled to privacy protection as are members of the public. They are recommended for all federal agencies.

Requests for access to agency records reflecting the current home addresses or whereabouts of third parties are frequently made by estranged family members or local authorities who need to locate people urgently. (See, e.g., "FOIA Focus," page 7.) In responding to such requests, a number of factors should be taken into consideration.

First, the way in which the address was determined and the form in which it is maintained must be considered. Either may trigger the application of a particular statute precluding the release of the information under Exemption 3 of the FOIA. For example, if the address originated as IRS information it likely would have been taken from the individual's tax return and would be prohibited from disclosure under the Tax Reform Act of 1976, 26 U.S.C. § 6103. Another example is an address derived from a claim for veteran's benefits; access to such information is restricted by 38 U.S.C. § 3301. (It is important to note, however, that both statutes provide for release of personal information to local courts or other authorities in certain situations, such as child support cases. See, e.g., 26 U.S.C. § 6103(l)(6); 38 U.S.C. § 3301(b), (f)).

Traditionally, third party requests for access to addresses have been denied on the basis of FOIA Exemption 6. However, Exemption 6, perhaps more than any other FOIA exemption, permits agencies broad discretion in determining whether access is appropriate. After discerning the magnitude of the invasion of privacy which would be expected to result from a requested disclosure, a determination of any possible public benefit must be made. In this context, for example, there is a high degree of public interest in cases in which requesters seek information for child support purposes, in that the public will be benefited overall if parents support their children. Likewise, of course, agencies should be as responsive as possible to particularly urgent requests received from police or hospital authorities. Requests based upon assertions of this type of critical need, when accompanied by showings sufficient to enable agency employees to verify them, should be honored as a matter of policy.

Moreover, even where release of an address is prohibited by statute or outweighed by privacy interests, a letter or some similar type of notification to the individual sought may satisfactorily resolve the request. Some agencies routinely forward such request letters, while others send letters of their own. Under either procedure, an agency can give persons sought an opportunity to contact the requesters, while still affording them continued freedom from unwanted intrusions on their privacy.

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January 1, 1980

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January 1, 1980

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Updated August 13, 2014