

Holder Says Government Records Should be Presumed Public

Attorney General Eric Holder has issued his much-anticipated memorandum advising executive branch agencies how the Obama Administration wants the federal Freedom of Information Act to be interpreted. In it, he expressly rescinds the Bush Administration's standard favoring withholding information, and orders that government agency records should be presumed public.

The memo – traditionally issued by an attorney general several months into a new administration – sets the tone for executive branch agencies in how they interpret and administer FOIA. Holder's memo parallels many components of the 1993 memo issued by then-Attorney General Janet Reno under President Bill Clinton. The memo states that:

- FOIA denials will only be defended if an agency "reasonably foresees that the disclosure would harm an interest" protected by one of the exemptions to release or if it is prohibited by law.
- Agencies must be "fully accountable" for administering FOIA. He said each agency's Chief FOIA Officer must ensure compliance with the law and "recommend adjustments to agency practices, personnel, and funding" as needed.
- Agencies should "readily and systematically post information online in advance of any public request."
- FOIA professionals within the agencies are "equally important" to any other component of application and accountability to FOIA and should have "full support" from their agencies as well as "the tools they need to respond promptly and efficiently to FOIA requests."

The Holder memo also directs the Justice Department to apply its guidance to pending cases "if practicable" when there is a "substantial likelihood" that applying the new standards would result in a "material disclosure of additional information."

"The Holder memo is a refreshing change from the disastrous standard set by former Attorney General John Ashcroft in 2001," said Reporters Committee Executive Director Lucy A. Dalglish. "We hope it empowers federal employers who manage these public records to improve their services to the taxpayers who request them."

The memo points to several statements made by President Barack Obama in the directives he issued on Jan. 21. He reiterates that FOIA is not intended for government to "keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

The memo, released during Sunshine Week, which draws attention to the need for transparency in government, is available [here](#).

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