



September 26, 2024

## MEMORANDUM FOR DHS FOIA OFFICERS

FROM:                   Catrina Pavlik-Keenan  
                              Deputy Chief FOIA Officer

SUBJECT:               **Fiscal Year 2024 Policy and Instruction Lookback**

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**Timeliness:** With the start of the new fiscal year, this memo serves as a lookback at all updated policies, instructions, or guidance communicated by the Department of Justice (DOJ), the Department of Homeland Security Deputy Chief FOIA Officer (DCFO), or other authority during Fiscal Year 2024 that impacts FOIA operations.

**Purpose:** This memorandum provides a consolidated overview of the guidance and artifacts published by the Department of Justice, Office of Information Policy (DOJ-OIP) or circulated on behalf of the DCFO during the fiscal year. This memo may serve as a quick reference guide to those items.

**Context:** Below please find , in order of release, a brief overview of each piece of guidance sent. This will include the origin of the guidance, any artifacts or locations of artifacts distributed, as well as dates distributed.

### ***Sensible Classification Act (SCA)***

The *Sensible Classification Act (SCA)* was signed into law in December of 2023 as part of the *Intelligence Authorization Act (IAA)*. The *SCA* can be found in the *IAA*, which is included in the *National Defense Authorization Act (NDAA)*. The *IAA* authorizes funding, gives legal authorities, and enhances Congressional oversight for the U.S. Intelligence Community. The *SCA* was introduced to the *IAA* to promote reform of the nation's security classification system by reviewing declassification review standards. The text requires that any document processed under FOIA that is more than 25 years old be sent to the National Declassification Center. The full *SCA* can be found here: [S. 1518 Sensible Classification Act of 2023](#)

### ***Third Party Requests for National Law Enforcement Accountability Database (NLEAD)***

On May 9, 2024 the DCFO distributed a memo to Component FOIA Officers describing handling instructions for third parties seeking NLEAD records. The DOJ determined that, because the NLEAD contains records of law enforcement officer misconduct, acknowledging the existence of records in the NLEAD pertaining to third-party individuals would constitute a clearly unwarranted invasion of privacy and outweighs any public interest in disclosure. (*See* 5 U.S.C. § 552(b)(6) & (7)(C).) This memo served as a reminder to DHS Component FOIA

Offices to consider the DOJ guidance and evaluate and conduct a balancing test under exemptions (b)(6) and (b)(7)(C) for each request received for this record type.

### ***GLOMAR Usage***

On May 22, 2024 the DCFO emailed guidance to Component FOIA Officers on issuing a GLOMAR response. The guidance reminds Component FOIA Offices that they may use GLOMAR responses in cases where determined appropriate. While GLOMAR responses and letters *are* proper responses, GLOMAR is not an approved final disposition as it pertains to case closeout. This means that while you may cite a full denial under GLOMAR and (b)(6),(b)(7)(c) in the letter, you must also select those exemptions during the case closeout process. No full denial case should be without exemptions for purposes of annual reporting.

### ***Still Interested Guidance***

On June 21, 2024 a memo was issued by the DCFO regarding the use of “Still Interested Letters.” This memo served as guidance to remind Component FOIA Offices that the Department must still follow DOJ’s guidance on the use of this letter type. The memo outlines a series of questions or procedures that should be used when determining the appropriateness of issuing a “Still Interested Letter.” The memo can be found on the FOIA Employees Resource page as well as the Department’s FOIA Library.

### ***Freedom of Information Act Guidance on Misdirected FOIA Requests, Consultations, Referrals, and Coordination, DHS Directive 262-11-006***

This Instruction was issued on July 1, 2024 and implements the *Department of Homeland Security (DHS) Directive 262-11, Freedom of Information Act (FOIA) Compliance*. It establishes requirements for processing misdirected FOIA requests and procedures regarding consultations, referrals, and coordination that are consistent with the *FOIA Improvement Act of 2016, 5 U.S.C. § 552* and amendments, DHS’s FOIA regulations, and guidance provided by the DOJ-OIP. A copy of the directive can be found on DHS Connect under the directive number.

### ***2024 Updates to FOIA Exemption 3 Statutes***

On September 12, 2024, the DOJ-OIP published updates to the FOIA Exemption 3 resources found on their website. The updates serve to assist agencies in their administration of the FOIA and to better help the public understand the use of Exemption 3. Within these resources can be found the most current listing of federal statutes that federal courts have affirmatively found to qualify as Exemption 3 statutes. This guidance should be used by all DHS FOIA Components to guide application of Exemption 3 statutes to records or information withheld under Exemption 3. Following the publishing of this updated guidance, DOJ will only accept the statutes listed in the updated guidance for future FOIA Annual Reports. Copies of the list for reference can be found here: [Office of Information Policy | Key FOIA Resources: 2024 Updates to Exemption 3 Statute Resources \(justice.gov\)](#)

### ***Perfecting Cases Upon Receipt***

On September 24, 2024, the DCFO emailed guidance to Component FOIA Officers on perfecting cases received by DHS Component FOIA Offices. The email states that, per the DOJ, cases should be considered perfected upon receipt and later changed to an unperfected state during triage, if necessary. Following this workflow enables FOIA offices to accurately capture

the high-volume number of DHS FOIA requests, since timely triage is not always feasible. It is important for each Component to have accurate open and backlogged case information. This will help ensure each Component FOIA Office can represent their program needs, accurately exhibit the need for additional resources, and correctly reflects its limitations when determining additional mandates that are projected on Components during litigation productions.