



Freedom of Information Act (FOIA) Facts

CAAs often receive various requests from the media and general public for records or, alternatively, want to request information from the federal government. This article is intended to help CAAs better understand whether they are legally required to disclose information to the media and general public under FOIA and to provide an update on new procedures for federal government agencies responding to FOIA requests.

The federal Freedom of Information Act (FOIA) is a law ensuring public access to U.S. government records. According to President Barack Obama, FOIA is to be administered with the presumption that “[i]n the face of doubt, openness prevails.”¹ The federal government, not the general public, carries the burden of proving why information should not be released. However, the disclosure obligation under the FOIA is not absolute. FOIA provides exemptions to protect, for example, national security, personal privacy, privileged records, and law enforcement interests.

Federal court decisions indicate that FOIA does not apply to most federal grantees, including CAAs.² Thus, no federal requirement exists that grantees, even federally-funded ones, are required to provide third parties, such as the press, access to their records. Rather, FOIA applies to federal government agencies, such as the U.S. Departments of Health and Human Services and Energy, which either directly or indirectly provide funding to CAAs. However, any information that a CAA supplies to a federal agency may be subject to FOIA and to the federal laws governing that agency once that information is in the hands of the federal agency.

A March 2009 Memorandum for Heads of Executive Departments and Agencies (<http://www.justice.gov/ag/foia-memo-march2009.pdf>) from the Obama administration implements an approach to FOIA that is intended to result in further transparency of federal government operations. The memorandum requires federal agency to err on the side of granting FOIA requests by stating that “the Department of Justice will defend a denial of a FOIA request only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law.”³ The memorandum reminds federal agencies of a new requirement that went into effect on December 31, 2008, pursuant to Section 7 of the OPEN Government Act of 2007.⁴ For all FOIA requests filed on or after that date, federal agencies must assign an individualized tracking number to requests that will take longer than 10 days to process, and provide that tracking number to the requester. In addition, agencies are required to establish a telephone line or Internet service that requesters can use to inquire about the status of their requests using the request’s assigned tracking number, including the date on which the agency received the request and an estimated date on which the agency will complete action on the request. Further information on these requirements is

available on the Department of Justice's website
(www.usdoj.gov/oip/foiapost/2008foiapost30.htm).

Even though FOIA does not apply to CAAs, state public records laws may apply – especially to public CAAs, but also, in some cases, to nonprofit CAAs; each state's law must be analyzed individually to determine whether it applies to a CAA. Additionally, some state CSBG laws, regulations and/or grant agreements may require public access to a CAA's records. Thus, if a CAA receives a request for records, CAPLAW strongly recommends that the CAA work with an attorney in its state that is familiar with the state's public access to records laws to determine the requirements applicable to CAAs.

¹ President Obama's January 21, 2009 FOIA Memorandum for the Heads of Executive Departments and Agencies available at http://www.whitehouse.gov/the_press_office/Freedom_of_Information_Act/.

² See *Boggs v. Southeastern Tidewater Opportunity Project*, 1996 U.S. Dist. LEXIS 6977 (E.D. Va. 1996); *Forsham v. Califano*, 587 F.2d 1228 (D.C. Cir. 1978), *aff'd sub nom.*, *Forsham v. Harris*, 445 U.S. 169 (1980).

³ Attorney General Eric Holder's March 19, 2009 FOIA Memorandum for the Heads of Executive Departments and Agencies, p. 2 available at <http://www.justice.gov/ag/foia-memo-march2009.pdf>.

⁴ See Section 7 of the OPEN Government Act of 2007, Pub. L. No. 110-175.