

# ASAP 2009 2<sup>nd</sup> ANNUAL NATIONAL TRAINING PROGRAM

MARCH 8-11, 2009

LAS VEGAS, NEVADA – HARRAH'S HOTEL

(Revised February 12, 2009)

**SUNDAY, MARCH 8, 2009**

6:00 -9:30 pm Program Registration – Check in and pick up your program materials. – Reno/Tahoe Ballroom Foyer

**MONDAY, MARCH 9, 2009**

7:15–8:15 am Program Registration and Continental Breakfast Foyer – Visit with the ASAP Sponsors

8:15-8:30 am Welcoming Remarks – Steven McConnell, ASAP President – Reno/Tahoe Rooms

8:30-8:45 am Break – Hotel Pulls Air Walls for Meeting Room Divisions

8:45-10:15 am CONCURRENT SESSIONS (Choose One)

## Session #1

**FOIA Overview: The Statute and Basic FOIA Procedures** – On December 31, 2007 the president signed into law the “Openness Promotes Effectiveness in our National Government Act of 2007,” or more commonly referred to as the “OPEN Government Act of 2007.” No changes to the Act’s nine exemptions were made. However, the amendments address procedural issues impacting FOIA administration. This session is perfect for FOIA newcomers and for those seeking an updated refresher course. It will include a detailed discussion of the statute, its procedural requirements and the new requirements based on the recent legislation.

*Dione Stearns, EOUSA  
Marilyn Falksen, ret., DoJ, OIP*

## Session #2

**Mandatory Declassification Review (“MDR”) Workshop** – How do MDRs work? What are the requirements? How do they differ from FOIA requests? What is the appeals process? Hear the experts discuss the details of this process and come ready with questions!

*Jay Bosanko, ISOO*

## Session #3

**GAO Privacy Report: Alternatives Exist for Enhancing Protection of Personally Identifiable Information (NEW!)** - Panelists will discuss the findings of GAO, which were the subject of Congressional testimony in a hearing before the U.S. Senate Committee on Homeland Security and Governmental Affairs entitled “Protecting Personal Information: Is the Federal Government Doing Enough?”.

*Hugo Teufel, former DHS  
Evan Hendricks, Privacy Times*

## Session #4

**Engaging Chief FOI Officers & Program Managers (NEW!)** - A successful FOIA program requires the support and assistance of your agency’s managers, including the Public Liaison, the Call Center, the Chief FOIA Officer, and more. Listen to presentations by agencies in which the combined program support has resulted in a stronger, more viable program, which meets the requirements of the new statute.

*Fred Sadler, FDA  
Anne Weismann, CREW*

10:15–10:30 am Coffee Break - Foyer – Visit with the ASAP Sponsors

10:30-12:00 pm CONCURRENT SESSIONS (Choose One)

## Session #5

**FOIA Overview: The Nine Exemptions** – The FOIA is a disclosure statute, but provides for the withholding of information in nine different circumstances. This session examines each of these nine exemptions in an overview fashion.

*Will Kammer, DoD  
Carmen Mallon, DoJ, OIP*

## Session #6

**Standing Up a Privacy Program (NEW!)** - This session will provide insight into the complex elements that are essential to running a successful privacy program. Some of the topics to be discussed include policy gaps and risk assessment, development of policies and procedures, compliance with the myriad of statutes and OMB Issuances in the area of privacy, measuring the success of your program, and education and training.

*Christina Jones, State  
Cindy Allard, DoD  
Nathan Coleman, DHS*

## Session #7

**Fees & Fee Waivers (NEW INFORMATION!)** – Fee issues are always a difficult part of the FOIA officer’s life. This session will help you understand the FOIA fee structure including such difficult issues as requester fee categories, who should pay fees and under what circumstances, the basis for granting fee waivers, and reductions in fees. Included are the new restrictions placed on assessing fees under the Open Government Act.

*Steve McConnell, NASA  
Rebecca Daugherty, Journalist  
Marilyn Falksen, ret., DoJ, OIP*

## Session #8

**Recent Litigation Cases - (NEW INFORMATION!)** – A discussion focusing on some of the most recent FOIA litigation, the courts’ rulings, and the possible impact that these decisions could have on your very own FOIA program.

*Caroline Smith, DoJ, OIP  
Joel Miller, FBI*

**12:00-1:15 pm Group Lunch – Range Steakhouse Restaurant (Harrah’s)**

**1:15-2:45 pm CONCURRENT SESSIONS (Choose One)**

**Session #9**

**The Privacy Act of 1974: An Overview** – A great basic or refresher course featuring the scope of the ACT; policy objectives; what has changed since its inception; its impact on how we conduct business; systems of records notices; exemptions; and administrative considerations.

*Ramona Oliver, NARA  
Cindy Allard, DoD*

**Session #10**

**Exemption 2 (High) and The Law Enforcement Tools of the FOIA: Exemptions 7(A), (B), (D), (E) & (F)** – How does the versatile Ex. 2 overlap with other exemptions? How can the “circumvention” argument be used to protect Homeland Security-related and IT-related information? Also, a close look at those special exemptions that apply exclusively to law enforcement records and the protection of informants, investigative techniques and persons who, if identified, could be harmed.

*Dione Stearns, EOUSA  
Joel Miller, FBI*

**Session #11**

**Exemption 5: Internal & Deliberative Information** – Discussion of the elements and privileges incorporated in Exemption 5, to include the predecisional and deliberative process thresholds, attorney-client communications and attorney work product.

*Caroline Smith, DoJ, OIP  
Fred Sadler, FDA*

**Session #12**

**Privacy Impact Assessments (PIAs)** – The E-Gov Act has made PIA a part of everyone’s life. Going beyond the minimum, just what is a PIA and how does it fit into the government’s responsibilities and activities?

*Hugo Teufel, former DHS  
Nathan Coleman, DHS*

**2:45-3:00 pm Coffee Break - Foyer – Visit with the ASAP Sponsors**

**3:00-4:30 pm CONCURRENT SESSIONS (Choose One)**

**Session #13**

**Privacy Act Exceptions: Disclosure Without Consent** – Subsection (b) is discussed in depth, focusing on when an agency can disclose records from a Privacy Act system of records without the prior written consent of the individual to whom the record pertains. All 12 exceptions will be covered.

*Ramona Oliver, NARA  
Christina Jones, State*

**Session #14**

**Business Information: Exemption 4** - The agency considerations and obligations in handling data submitted by business and government contractors are examined. Learn how to recognize trade secret and confidential, commercial information. This session also will focus on Submitter Notice under E.O. 12,600 and contracts.

*Fred Sadler, FDA*

**Session #15**

**Negotiations** - Successfully communicating with requesters can create a win-win situation. FOIA legislation emphasizes more productive communications with requesters from the start of the FOIA process. This session will help you become a more successful communicator and may just help you attack your backlog!

*Steve McConnell, NASA  
Rebecca Daugherty, Journalist  
Anne Weismann, CREW*

**Session #16**

**Defense, Foreign Relations & Classified Information: Exemption 1** – Everything you ever wanted to know about handling FOIA requests for documents containing national security information and the application of Ex. 1. Speakers will discuss the interplay of FOIA’s emphasis on disclosure and the E.O. 12958 requirements for protection. Automatic declassification issues will also be discussed.

*Will Kammer, DoD  
Jay Bosanko, ISOO*

**4:30 pm Complete and Return Daily Program Evaluation Form**

**TUESDAY, MARCH 10, 2009**

**7:15–8:15 am Continental Breakfast - Foyer – Visit with the ASAP Sponsors**

**8:15-8:30 am Welcoming Remarks – Steven McConnell, ASAP President – Nevada Ballroom**

**8:30-10:00 am Session #17 (PLENARY) - Open Government Act Sections 6 & 7: Search Fees and Misdirected FOIA Requests (NEW!)** – On December 31, 2008, new procedural requirements took effect for agencies to route misdirected FOIA requests, and to forego charging search fees if the 20-day response period cannot be met. Are you sure you understand your responsibilities, what tolling is, and when the clock begins to tick?

*Melanie Pustay, Department of Justice, Office of Information & Privacy*

**10:00-10:15 am Coffee Break - Foyer – Visit with the ASAP Sponsors**

**10:15-11:30 am Session #18 (PLENARY) - Annual Reports, Recent Developments (NEW!) – Nevada Ballroom**

The OPEN Government Act imposed a number of new reporting requirements, which have increased the need for closer monitoring of FOIA workload statistics. Come hear a review of these new requirements, with a focus on what and how to report.

*Melanie Pustay, Department of Justice, Office of Information & Privacy*

**11:30-12:45 pm Group Lunch – Range Steakhouse Restaurant (Harrah’s)**

**12:45-2:00 pm CONCURRENT SESSIONS (Choose One)**

**Session #19**

**FOIA and the Privacy Act Interface** - The complex relationship between the Privacy and the Freedom of Information Acts: when to apply the statutes, where they dovetail, and where they diverge. Includes a discussion of the issues affected by both Acts.

*Ramona Oliver, NARA*

**Session #20**

**Best Practices in Redaction Techniques and Approaches** – You know that some information in your document should be protected, but you haven't done this before - how should you redact and what should the final copy look like, and what are your options? Can a requester unredact the records that are released? This session will include a practical overview of the procedural and legal requirements used in processing FOIA requests.

*Steve McConnell, NASA  
Fred Sadler, FDA*

**Session #21**

**Privacy and the FOIA: Exemptions 6 and 7(C)** – An examination of the protections provided by FOIA Exemptions 6 and 7(C) for personal information in general government and investigative files. This session will help you understand what is considered “private” information in your records, and how it is balanced against the “public interest.”

*Marilyn Falksen, ret. DoJ, OIP  
Carmen Mallon, DoJ, OIP*

**Session #22**

**Identity Theft** – Do you know what to do if there is a data breach within your organization involving personally identifiable information? Learn more about reporting incidents involving personally identifiable information, the need for core response groups, mitigating the risk of identity theft should a breach occur, and how to protect your personal information.

*Christina Jones, State  
Sam Jenkins, DoD  
Jonelle Lewis, VA*

**2:00-2:15 pm Coffee Break - Foyer – Visit with the ASAP Sponsors**

**2:15-3:30 pm CONCURRENT SESSIONS (Choose One)**

**Session #23**

**What the Heck is a Privacy Act System of Records Notice (SORN)?** –What’s involved in writing a SORN, when should you prepare a SORN, how should SORNs be updated, and how can Program Managers help in drafting a SORN? This session is sure to provide you with the best practices for drafting and maintaining Privacy Act SORNs.

*Cindy Allard, DoD  
Nathan Coleman, DHS*

**Session #24**

**Litigants’ Cases (NEW!)** - A discussion on the issues relating to litigation under the FOIA, including some of the most recent decisions. Effective this year under the newest FOIA legislation is a specific loosening up of attorneys fees for FOIA requesters who substantially prevail in a lawsuit -- whether or not a case ever reaches the court. A sure prediction is that more lawsuits are on the horizon. Likely litigants from outside the government will discuss why they sued, what the courts ruled and what impact their lawsuits may have had on federal agencies.

*Moderator: Rebecca Daugherty  
Anne Weismann, CREW  
Evan Hendricks, Privacy Times*

**Session #25**

**Exemption 5: Internal & Deliberative Information** – Discussion of the elements and privileges incorporated in Exemption 5, to include the predecisional and deliberative process thresholds, attorney-client communications and attorney work product.

*Caroline Smith, DoJ, OIP  
Joel Miller, FBI*

**Session #26**

**Administrative Procedural Guidance** – Where do I start when I receive a FOIA or Privacy Act request? How do I conduct a search? What are the best administrative practices related to processing requests? And what about assessing fees? This session will address all of these issues and more!

*Marilyn Falksen, ret. DoJ, OIP  
Carmen Mallon, DoJ, OIP*

**3:30-5:00 pm CONCURRENT SESSIONS: SPECIALIZED TRAINING (Choose One)** These sessions are designed for a specific agency focus. Also included is a general (non-specific) session which will be geared to audience questions and needs.

**Session #27**

**Dept. of Defense**  
*Will Kammer  
Sam Jenkins*  
**Special Session for Air Force Follows Immediately**

**Session #28**

**Dept. of Interior**  
**Session is extended until 6:00 pm**  
*Alex Mallus*

**Session #29**

**Dept. of Energy**  
**CANCELLED!**

**Session #30**

**NASA**  
*Steve McConnell*

**Session #31**

**Non-Specific**  
*Caroline Smith  
Carmen Mallon*

**Session #32**

**Indian Health Service**  
*Bill Tibbitts  
Janet Ingersoll  
Janet Gowan*

**5:00 pm Complete and Return Daily Program Evaluation Form**

## WEDNESDAY, MARCH 11, 2009

**7:15–8:15 am Continental Breakfast - Foyer – Visit with the ASAP Sponsors**

**8:15-9:45 am CONCURRENT SESSIONS (Choose One) Morning announcements will be made in each breakout session.**

**Session #33**

**Users Panel** – It is well known that most FOIA offices are understaffed and have little or no resources. Yet, many FOIA officers have improved their own agency processes based upon suggestions from the requestors. Come and listen to the insights of requestors who have used information released under FOIA for important and productive purposes.

*Rebecca Daugherty, Journalist  
Anne Weismann, CREW  
SEJ Representative*

**Session #34**

**Privacy and the FOIA: Exemptions 6 and 7(C)** – An examination of the protections provided by FOIA Exemptions 6 and 7(C) for personal information in general government and investigative files. This session will help you understand what is considered “private” information in your records, and how it is balanced against the “public interest.”

*Marilyn Falksen, ret. DoJ, OIP  
Dionne Stearns, EOUSA*

**Session # 35**

**30) DoD Privacy and IT (NEW!)** – The Department of Defense has issued a Directive-Type Memorandum on social security number reduction plan which dovetails with the guidance on protecting personally identifiable information memo. Additionally, new guidance on communications and information touching on privacy and electronics was recently released. As we have seen before, privacy and IT seem to be on a collision course. How can this be avoided?

*Sam Jenkins, DoD*

**9:45-10:00 am Coffee Break – Foyer – Visit with the ASAP Sponsors**

**10:00–11:30 am CONCURRENT SESSIONS (Choose One)**

**Session #36**

**Customer Service/Backlogs** - Backlogs are a problem, for both the agency, and the requester. What’s the best approach to work with the requester community, to provide good customer service, while meeting the increased demands placed on the FOIA Program?

*Fred Sadler, FDA  
Carmen Mallon, DoJ, OIP  
Anne Weismann, CREW  
Sergio Poggione, ret. Canadian Refugee  
Board*

**Session #37**

**Privacy Horizons (and Pending Legislation) (NEW!)** - Rumor has it that the Privacy Act will be amended in 2009! Is there other privacy-related legislation coming our way? This panel will address the likely legislative changes that we will face in the privacy area and how it might impact your agency’s operations.

*Hugo Teufel, former DHS  
Evan Hendricks, Privacy Times*

**Session #38**

**Mandatory Declassification Review (“MDR”) Workshop** – How do MDRs work? What are the requirements? How do they differ from FOIA requests? What is the appeals process? Hear the experts discuss the details of this process and come ready with questions.

*Jay Bosanko, ISOO*

**11:30-12:45 pm Group Lunch – Range Steakhouse Restaurant (Harrah’s)**

**12:45-2:15 pm Session #39 (PLENARY) - Records Management: It’s Not Just The Same Old Story! – Nevada Ballroom (NEW INFORMATION!)** - What is the definition of a federal record? Is your agency in compliance with NARA records management standards? Are there new ways of approaching records management? What is E-Discovery and will it impact how your agency maintains records? Learn the answers to these questions and more!

**2:15-2:30 pm Coffee Break - Foyer**

**2:30-4:00 pm Session #40 (PLENARY) - IT Security & Privacy, Including Breach Notification (NEW!) Nevada Ballroom**  
How do IT security and privacy intersect? What’s required when a breach is identified, and who do you report this to? Are they one in the same concern or distinctly separate concerns? This panel will explore the interplay between IT security and privacy from the perspectives of a Chief Information Officer, Chief Privacy Officer, and privacy professionals.

*Hugo Teufel, Formerly with the Department of Homeland Security  
Christina Jones, Department of State  
Jonelle Lewis, Department of Veterans Affairs*

**4:00-4:30 pm Session #41: Questions and Answers – Nevada Ballroom** - This is your last chance to get that burning question answered.  
- All available faculty

**4:30 pm Complete Evaluations/Return and Certificates of Attendance Distributed**

### **SPECIAL NOTE: ASAP is submitting this program to IAPP for Privacy CPE Credit.**

**Disclaimer:** Programs are subject to change. While ASAP endeavors to ensure that all its program materials are in accordance with the law and established U.S. Government policies, none of the procedures or policies presented in any ASAP training session or set forth in any ASAP publication should be considered official U.S. Government or U.S. Government Agency policy. Official policy is set forth in the appropriate directives and regulations governing each agency's activities. ASAP, its Board of Directors, Officers, employees or volunteers are not liable for any and all claims or actions that may be brought against them arising out of or relating to speaker presentations.