

**2019 ASAP FOIA/PRIVACY ACT
TRAINING WORKSHOP**

**HEAR YE: FOIA UPDATES
FROM THE COURTS**

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Procedural Issues

Open America Stays

How much time will the courts give an agency to process a request?



Procedural Issues

Definition of a “record”/“scoping”

From: Wolfinger, Gretchen M. (TAX)
<gretchen.wolfinger@tax.usdoj.gov>
Sent: Thursday, May 22, 2014 4:17 PM
To: Bringer, Noah E. (TAX) <Noah.E.Bringer@tax.usdoj.gov>
Subject: RE: [REDACTED] NR

Non-Responsive

Procedural Issues

Reasonable description: locatable with no more than a reasonable amount of effort by professional employees



Procedural Issues

FOIA Improvement Act of 2016
Foreseeable Harm



Exemption 1

Redactions to protect vulnerabilities of American weapons systems were waived by disclosures by processing component and by disclosures processed by other components in the same agency



Exemption 3

Statutes enacted after 2009 must reference FOIA's Exemption 3 in order to qualify under the 2009 Open FOIA Act



Exemption 4

What is "confidential" after *Food Marketing Institute* ?



Exemption 5

Consultant corollary
Attorney-client privilege
Deliberative process privilege



Exemption 6

Protecting identities of agency employees who investigated wrongdoing at a state biolab because a “nefarious person interested in . . . specific toxins” could harass or threaten those employees where requester provided “no” public interest



Exemption 7

Determining whether records are compiled for law enforcement purposes



Exemption 7(A)

When a law enforcement proceeding is on appeal, could disclosure reasonably be expected cause interference?



Exemption 7(C)

Protecting suicide note to widow



Exemption 7(C)

Privacy interest vs. public interest in showing agency misconduct or in public education of agency activity


