

**FOIA Redaction
Workshop**

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Knowledge, Skills, and Abilities to Redact

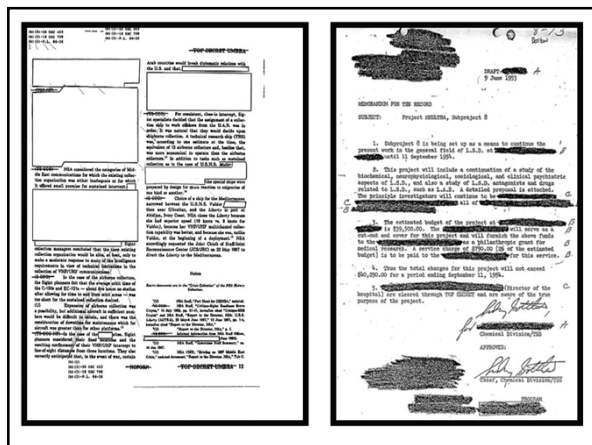
- ▶ **Time**
 - Needed to consult with subject matter experts
 - Search, prepare, review, copy, redact electronically, double-check work, release, & post to 'net
- ▶ **Understanding/Comprehension**
 - Knowledge level of FOI, case law, internal regs & policy, subject matter expertise, training or mentoring
- ▶ **Work Habits**
 - Ability to focus, understand, research, consult, work autonomously & make supportable decisions (with appropriate documentation)
- ▶ **Position**
 - Supervisor, mentor, trainee, search only, quality control

“Proper” FOI Requests

- ▶ Only needs to “reasonably describe” records sought
- ▶ Doesn't have to be labeled “FOI request”
- ▶ Submitted per your agency regulations
- ▶ May process under both FOIA & Privacy Act

Statutory Redaction Requirements

- ▶ Make a reasonable effort to estimate the volume of redactions, and
- ▶ Clearly identify the location & extent of all redactions, and
- ▶ Release segregable portions of records, and
- ▶ Insert the exemption which supports the redaction at the site of each redaction.



Best Practices

- ▶ **Contact & Negotiate with Requesters**
 - Clarify or modify a request
 - Document all revisions in cover letter/email
- ▶ **Scoping Records**
 - Identify & redact non-responsive info
 - Scoping is not a denial
- ▶ **Discretionary Release**
 - Speculative or abstract fears are insufficient grounds to withhold a record
 - Foreseeable Harm Test

OPEN Gov Act, sect. 6(a)

An agency may toll a request

- ▶ An agency may make one request for information and toll the statutory time period “while ...awaiting ...information that it has reasonably requested from the requester.” You may toll any number of times for fee related reasons
- ▶ Don't begin redaction if request is unclear

FOIA Improvement Act of 2016

Focuses on Procedural Issues:

- ▶ FOIA Public Liaison contact info, & dispute resolution option (OGIS)
- ▶ Codifies “foreseeable harm” standard
- ▶ Amends Exemption 5 protection
 - No longer provides for deliberative process protection, for records created 25 years prior to request date
 - Use other exemptions which apply

Proactive Release of Redacted Records

- ▶ Establish “procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting such records in a publicly accessible electronic format.”

Posting Redacted Records

The “Rule of 3” is Codified for Frequently Requested Records:

- ▶ Agencies required to “make available for public inspection in an electronic format,” records “that have been requested 3 or more times.”

Codification of Foreseeable Harm for Discretionary Exemptions

- ▶ Redact information only if you “reasonably foresee” that disclosure would harm an interest protected by an exemption, or is prohibited by law
- ▶ Initiate partial release if some info in a record must be redacted
- ▶ Take reasonable steps to segregate and release nonexempt information

Not All Exemptions are Eligible for Discretionary Release

- ▶ No discretion for exemptions 1, 3, 4, 6, 7C, 7D
- ▶ If you reasonably foresee that disclosure would harm a protected interest, an agency may use discretion to withhold records under Ex. 2, 5, parts of 7, 8, & 9
- ▶ Maintain an administrative record

Redaction Issues: Checking Your Work Before Release

- ▶ Equities in other agencies, requiring coordination prior to redaction/release?
 - Mosaic effect?
- ▶ Understand mandatory withholding vs discretionary withholding, & redact using foreseeable harm test
- ▶ Meet physical requirements for redaction
- ▶ Use technology - email, CDs, DVDs, etc.
- ▶ Posting to 'net, in compliance with section 508 of Americans with Disabilities Act

Non-Standard Redactions (*Note Possible Privacy Act Implications*)

- ▶ Video & audio tapes*
- ▶ Microfiche
- ▶ WAVE files (voice mail messages)
 - NARA: <http://www.archives.gov/records-mgmt/email-mgmt.html>
- ▶ Biometric indicators*
- ▶ Photographs*
- ▶ PDFs

Denials and Appeals for Redacted Records

- ▶ Denials Process
 - Comes with automatic right to appeal
 - “Reasonable effort” to estimate volume of withheld materials
- ▶ Appeals Process
 - Provides for right to litigate
 - Maintain administrative record for redaction consultation
